CRIMINAL LAW JURISPRUDENCE
Public Domain Files. Feel Free to Share

PEOPLE OF THE PHILIPPINES v. ALFREDO BON
G.R. No. 166401, 30 October 2006; Tinga, J. (En Banc)

FACTS: Alfredo Bon was convicted by the trial court of eight counts of rape, the victims being the then-minor daughters of his brother. The trial court considered the qualifying circumstances of minority of the victims and Bon's relationship with them, and imposed upon Bon eight death sentences.

Upon automatic review, the Court of Appeals downgraded the convictions in two of the cases to attempted rape. It held that the prosecution failed to demonstrate beyond any shadow of doubt that Bon's penis reached the labia of the pudendum of the victim's vagina. Accordingly, it reduced the penalties attached to the two counts of rape from death for consummated qualified rape to an indeterminate penalty of ten (10) years of prision mayor, as minimum, to seventeen (17) years and four (4) months of reclusion temporal, as maximum, for attempted rape.

Subsequently, Republic Act No. 9346, titled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," was enacted. Section 2 of the said law mandates that in lieu of the death penalty, the penalty of reclusion perpetua shall be imposed. Correspondingly, the Court can no longer uphold the death sentences imposed by lower courts, but must, if the guilt of the accused is affirmed, impose instead the penalty of reclusion perpetua, or life imprisonment when appropriate.

ISSUE: Whether or not, with the elimination of death as a penalty, it follows that Bon should now be sentenced to a penalty two degrees lower than reclusion perpetua, the highest remaining penalty with the enactment of Rep. Act No. 9346

HELD: The Decision of the Court of Appeals is AFFIRMED WITH MODIFICATION.

Qualifying circumstances of minority and relationship correctly appreciated. The aggravating circumstances of minority and relationship were properly appreciated by the trial court. The minority of the victims and their relationship with Bon were aptly established in the lower court proceedings. Not only did the prosecution allege in the Informations the ages of the victims when they were raped but the prosecution also presented their birth certificates in court as documentary evidence to prove that they were both minors when Bon raped them. Bon, in open court, also admitted that that he was the uncle of both victims being the brother of the victims' father, and thus, a relative of the victims within the third degree of consanguinity. Appellate court correctly downgraded two (2) counts to attempted rape for failure of prosecution to prove penetration There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the crime of rape, penetration is an essential act of execution to produce the felony. Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his penis to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.

In two (2) of the eight (8) counts of rape with which Bon was charged, the records show that there was no penetration or any indication that the penis of Bon touched the labia of the pudendum of the victim's vagina. The victim herself testified that her uncle tried to insert his penis into her vagina but did not pursue the same when she cried of pain.

Appropriate penalties should be amended in light of Rep. Act No. 9346

Sec. 1 of Rep. Act No. 9346 specifically repeals all laws, executive orders and decrees insofar as they impose the death penalty, and not merely such enactments which are inconsistent with the said law. Two schools of thought can be considered in construing the phrase *"insofar as they impose the death penalty."* It can be claimed under the first school that the present application of the penalties for attempted rape of a minor does not "impose the death penalty," since none of the convicts concerned would face execution through the application of the penalty for attempted rape. Hence, the statutory provisions enforced in determining the penalty for attempted rape, or other crimes not punishable by death, are not amended by Rep. Act No. 9346. Under the second school, the operation of the provisions imposing the penalty for attempted rape of a minor necessarily calls for the application, if not its literal imposition, of death as a penalty, in the context of applying the graduated scale of penalties under Article 71 of the Revised Penal Code (RPC). If "impose" were to be construed to mean "apply," then it could be argued that Art. 71 was indeed amended by Rep. Act No. 9346.

There are troubling results if the interpretation of Rep. Act No. 9346 that limits its effects only to matters relating to the physical imposition of the death penalty, were to be upheld. The easy demonstration of iniquitous results is in the case of accomplices. Under Art. 267 of the RPC, as amended, kidnapping for ransom was punishable by death. For example, X and Y were tried for the crime. Both X and Y were convicted by final judgment as principal and accomplice, respectively.

Since X could no longer be meted the death penalty, he is sentenced instead to reclusion perpetua. Ordinarily, Y as an accomplice should receive the penalty next lower in degree, or reclusion temporal. Yet following the "conservative" interpretation of Rep. Act No. 9346, the graduation of penalties remains unaffected with the enactment of the new law. Thus, under Art. 71, which would still take into account the death penalty within the graduated scale, Y, as an accomplice, would be sentenced to reclusion perpetua, the same penalty as the principal. It might be argued that part of the legislative intent of Rep. Act No. 9346, by retaining the graduated scale of penalties under Art. 71, was to equalize the penalties of principals and accomplices for crimes previously punishable by death. However, considering that equalizing the penalties for principals and accomplices runs contrary to entrenched thought in criminal law, one could reasonably assume that a legislature truly oriented to enact such change would have been candid enough to have explicitly stated such intent in the law itself. Moreover, it would seem strange that the penalties for principals and accomplices are equalized in some crimes, and not in others. For example, this time X and Y were charged for simple kidnapping, with no qualifying circumstance that would have resulted in the imposition of the death penalty. Since the crime is not punishable by death, Rep. Act No. 9346 would have no effect in the imposition of the penalty for simple kidnapping. Accordingly, X would have been sentenced to reclusion perpetua as

the principal, while Y would have been sentenced to reclusion temporal as an accomplice. It would be less justifiable that in kidnapping for ransom, the principal and the accomplice would receive the same penalty, while in simple kidnapping, the principal suffers a higher penalty than the accomplice. A further demonstration of such iniquitous results of the conservative interpretation of the new law is in the case of frustrated and attempted felonies which were punishable by death if onsummated. The consummated felony previously punishable by death would now be punishable by reclusion perpetua. With the premise that the graduation of penalties under Art. 71 of the RPC remains unaffected with the enactment of the new law, the same felony in its frustrated stage would be penalized one degree lower from death, or also reclusion perpetua. It does not seem right, of course, that the same penalty of reclusion perpetua would be imposed on both the consummated and frustrated felony. In the case of attempted felonies, the RPC provides that the penalty for attempted felonies is "a penalty lower by two degrees than that prescribed by law for the consummated felony." If it were to be insisted that Rep. Act No. 9346 did not affect at all the penalties for attempted felonies, then those found guilty of the subject attempted felonies would still be sentenced to reclusion temporal, even though the "penalty lower by two degrees than that prescribed by law for the consummated felony" would now be prision mayor. Again, this is inconsistent with established thought in criminal law.

No similar flaws ensue should Rep. Act No. 9346 be construed instead as not having barred. the application of the death penalty even as a means of depreciating penalties other than death. The negation of the word "death" as previously inscribed in Art. 71 will have the effect of appropriately downgrading the proper penalties attaching to accomplices, accessories, frustrated and attempted felonies to the level consistent with the rest of our penal laws. In the previous examples, Y, the convicted accomplice in kidnapping for ransom, would now bear the penalty of reclusion temporal, the penalty one degree lower than that the principal X would bear (reclusion perpetua). Such sentence would be consistent with Art. 52 and Art. 71 of the RPC, as amended, to remove the reference to "death." Moreover, the prospect of the accomplice receiving the same sentence as the principal would be eliminated. Consistent with Art. 51 of the RPC, those convicted of attempted qualified rape would receive the penalty two degrees lower than that prescribed by law, now Rep. Act No. 9346, for qualified rape. There can be no harmony between Rep. Act No. 9346 and the RPC unless the later statute is construed as having downgraded those penalties attached to death by reason of the graduated scale under Art. 71. Only in that manner will a clear and consistent rule emerge as to the application of penalties for frustrated and attempted felonies, and for accessories and accomplices. Henceforth, "death," as utilized in Art. 71 of the RPC, shall no longer form part of the equation in the graduation of penalties. For example, in the case of Bon, the determination of his penalty for attempted rape shall be reckoned not from two degrees lower than death, but two degrees lower than reclusion perpetua. Hence, the maximum term of his penalty shall no longer be reclusion temporal, as ruled by the Court of Appeals, but instead, prision mayor. This ruling should be given retroactive effect, except as to those persons defined as habitual criminals. However, it should be understood that this decision does not make operative the release of convicts presently serving their original sentences whose actual served terms exceed their reduced sentences, especially as there may be other reasons that exist for their continued detention.

There are principles in statutory construction that will sanction, even mandate, this "expansive" interpretation of Rep. Act No. 9346. The maxim *interpretare et concordare legibus est optimus interpretandi* embodies the principle that a statute should be so construed not only to be consistent with itself, but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system—a uniform system of jurisprudence.[75] **"Interpreting and harmonizing laws with laws is the best method of interpretation.** x x x x This manner of construction would provide a complete, consistent and intelligible system to secure the rights of all persons affected by different legislative and quasi-legislative acts."[76] There can be no harmony between Rep. Act No. 9346 and the Revised Penal Code unless the later statute is construed as having downgraded those penalties attached to death by reason of the graduated scale under Article 71. Only in that manner will a clear and consistent rule emerge as to the application of penalties for frustrated and attempted felonies, and for accessories and accomplices.

It is also a well-known rule of legal hermeneutics that penal or criminal laws are strictly construed against the state and liberally in favor of the accused.[77] If the language of the law were ambiguous, the court will lean more strongly in favor of the defendant than it would if the statute were remedial, as a means of effecting substantial justice.[78]The law is tender in favor of the rights of an individual.[79] It is this philosophy of caution before the State may deprive a person of life or liberty that animates one of the most fundamental principles in our Bill of Rights, that every person is presumed innocent until proven guilty.

In the case of Bon, for the six (6) counts of rape, the penalty of death is downgraded to reclusion perpetua with no eligibility for parole. For each of the two (2) counts of attempted rape, the penalty imposed by the Court of Appeals is downgraded by one (1) degree. There being no mitigating or aggravating circumstances, the penalty of prision mayor should be imposed in its medium period. Consequently, the new penalty of two (2) years, four (4) months and one (1) day of prision correccional as minimum, to eight (8) years and one (1) day of prision mayor as maximum, is imposed upon Bon.

PEOPLE OF THE PHILIPPINES, appellee,
vs.
DANNY DELOS SANTOS Y FERNANDEZ, appellant.
G.R. No. 135919 May 9, 2003

FACTS: In an Information dated February 23, 1998, appellant was charged with murder.

Upon arraignment, appellant pleaded "not guilty."

Marcelino De Leon testified that at around 8:00 p.m. of November 6, 1997, he saw Rod Flores drinking "gin" with Narciso Salvador, Marvin Tablate and Jayvee Rainier at the latter's house in Sarmiento Homes, San Jose del Monte, Bulacan. As he was about to fetch water from a nearby faucet, he approached them and borrowed Flores' cart. While waiting for the cart, he stood across Flores who was then seated and conversing with the group.Suddenly, appellant emerged from the back of Flores and stabbed him with a knife, making an upward and downward thrust. Flores ran after he was stabbed twice. Appellant pursued him and stabbed him many times. As a result, Flores' intestines bulged out of his stomach. Appellant ceased

stabbing Flores only after he saw him dead. Thereafter, he turned his ire against Jayvee Rainier and chased him. Fearful for his life, witness De Leon hid himself and later on reported the incident to the police.

Marvin Tablate corroborated De Leon's testimony. On cross-examination, Tablate testified that he tried to help Flores by separating him from the appellant who ran away. He also testified that the latter joined his group at about 11:00 a.m. and kept on "coming back and forth."

Dr. Caballero declared on the witness stand that Flores suffered twenty-one (21) stab wounds in the frontal, posterior and lateral side of his body, eleven (11) of which were fatal.

Appellant had a different version of the events. He denied the accusation and declared that on November 6, 1997 at 8:00 p.m., he was in his auntie's house in Muson, San Jose del Monte, Bulacan, forty (40) meters away from the scene of the crime. He was then fetching water. Earlier, at about 5:30 p.m., he and Flores met but they did not greet each other. There was no altercation between them. Hence, he could not understand why De Leon and Tablate testified against him.

Sonny Bautista testified that on that particular date and time, he and appellant were in their auntie's house in San Jose del Monte, Bulacan. They watched television up to 8:30 p.m. and then went home. At about 10:00 p.m., appellant was arrested. Bautista did not inform the policemen that they were watching television in their auntie's house at the time the crime took place. Neither did he accompany appellant to the police station.

On October 2, 1998, the trial court rendered a Decision, finding Danny delos Santos guilty of the crime of Murder with the qualifying circumstance of treachery.

ISSUE: Whether or not there is a need to prove motive to kill on the part of the accused.

RULING: No. Appellant argues that since the prosecution witnesses testified that there was no altercation between him and Flores, it follows that no motive to kill can be attributed to him. This is an inconsequential argument. **Proof of motive is not indispensable for a conviction, particularly where the accused is positively identified by an eyewitness and his participation is adequately established**. In *People vs. Galano*, we ruled that in the crime of murder, motive is not an element of the offense, it becomes material only when the evidence is circumstantial or inconclusive and there is some doubt on whether the accused had committed it. In the case before us, no such doubt exits as De Leon and Tablate positively identified appellant.

RODOLFO C. VELASCO VS. PEOPLE OF THE PHILIPPINES
[G.R. No. 166479, February 28, 2006]

Facts: on April 19, 1998, at about 7:30 o'clock in the morning, private complainant Frederick Maramba was cleaning and washing his owner type jeep in front of his house at Lasip Grande, Dagupan City when a motorized tricycle stopped near him. Accused Rodolfo Velasco dashed out of the tricycle, approached the complainant and fired at him several times with a .45 caliber pistol. The accused missed with his first shot but the second one hit the complainant at the upper arm, causing him to stumble on the ground. The complainant stood up and ran, while the accused continued firing at him but missed.
The shooting incident was reported to the police sub-station in Malued District by Barangay Captain Dacasin of Lasip Grande, describing the suspect as wearing a vest or a "chaleco." The police, composed of SPO4 Romulo Villamil, PO3 Rolando Alvendo, and SPO1 Soliven respondent and pursued the accused who proceeded on board a motorized tricycle to the highway going to Barangay Banaoang in Calasiao town.

The police caught up with the tricycle and brought the accused to the police sub-station. A firearm protruding from the waistline of the accused, three (3) magazines and fourteen (14) live ammunitions were confiscated from the possession of the accused. The police also recovered seven (7) spent ammunitions at the crime scene. At the City Jail in Dagupan City where the accused was subsequently brought, the private complainant Frederick Maramba identified and pointed to the accused as the one who fired at him, hitting him on the upper left arm. Complainant identified the affidavit which he executed naming the accused as his assailant and who shot him on the morning of April 19, 1998 in front of his residence at Lasip Grande.

An Information charged petitioner with the crime of Attempted Murder.

The accused, on the other hand, interposed the defense of alibi. He said that on April 18, 1998, he went to a friend's house in Lingayen, Pangasinan and spent the night there. The following morning, April 19, 1998, between 6:00 to 7:00 o'clock, he left Lingayen riding in the Volkswagen car of Berting Soriano. He alighted at the corner of Banaoang diversion road. From there he took a tricycle and told the driver to bring him at the foot of the bridge going to Bayambang. While on his way to Calasiao, he heard a jeep behind him blowing its horn and when he looked back he saw three men on board pointing their guns at him. He told the tricycle driver to stop and thereupon the three men approached him and introduced themselves as policemen. They confiscated his gun and then brought him to the police station for interrogation. Thereafter, the police lodged him in the City Jail of Dagupan.

Issue: Whether or not the defense of denial and alibi will stand against positive identification of assailant.

Held: Private complainant saw petitioner alight from the tricycle of Armando Maramba before he successively shot at him at a distance of about four meters while chasing him for 25 to 30 meters. Armando Maramba witnessed the shooting because he was the driver of the tricycle in which petitioner rode in going to the house of private complainant and in leaving the crime scene. After the shooting incident, private complainant went to the City Jail and identified petitioner as the person who shot him. At the Dagupan City Police Station, Armando Maramba pointed to petitioner as the assailant not because he saw a man wearing a chaleco, but because it was he whom he saw shoot the private complainant.

Petitioner's defense of alibi fails. As against positive identification by prosecution witnesses, the accused's alibi is worthless. Having been identified by two credible witnesses, petitioner cannot escape liability. Moreover, for alibi to prosper, it must be proven that during

the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the *locus criminis*. The defense of alibi with suspicion and caution not only because it is inherently weak and unreliable, but also it can be fabricated easily. It was not physically impossible for petitioner to be at the crime scene when the crime was committed since it only takes a ten-minute ride from the place where he allegedly alighted from the car of one Berting Soriano to the crime scene.

Alibi, the plea of having been elsewhere than at the scene of the crime at the time of the commission of the felony, is a plausible excuse for the accused. Let there be no mistake about it. Contrary to the common notion, alibi is in fact a good defense. But to be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the *locus criminis* at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.

As regards the failure of the police to present a ballistic report on the seven spent shells recovered from the crime scene, the same does not constitute suppression of evidence. A ballistic report serves only as a guide for the courts in considering the ultimate facts of the case. It would be indispensable if there are no credible eyewitnesses to the crime inasmuch as it is corroborative in nature. The presentation of weapons or the slugs and bullets used and ballistic examination are not prerequisites for conviction. The *corpus delicti* and the positive identification of accused-appellant as the perpetrator of the crime are more than enough to sustain his conviction. Even without a ballistic report, the positive identification by prosecution witnesses is more than sufficient to prove accused's guilt beyond reasonable doubt. In the instant case, since the identity of the assailant has been sufficiently established, a ballistic report on the slugs can be dispensed with in proving petitioner's guilt beyond reasonable doubt.

It must be stressed that motive is a state of (one's) mind which others cannot discern. It is not an element of the crime, and as such does not have to be proved. In fact, lack of motive for committing a crime does not preclude conviction. It is judicial knowledge that persons have been killed or assaulted for no reason at all. Even in the absence of a known motive, the time-honored rule is that motive is not essential to convict when there is no doubt as to the identity of the culprit. Motive assumes significance only where there is no showing of who the perpetrator of the crime was. In the case at bar, since petitioner has been positively identified as the assailant, the lack of motive is no longer of consequence.

The blood relationship of Armando Maramba and private complainant would not render the former's testimony unworthy of belief. On the contrary, relationship could strengthen the witnesses' credibility, for it is unnatural for an aggrieved relative to falsely accuse someone other than the actual culprit. Their natural interest in securing the conviction of the guilty would deter them from implicating a person other than the true offender. It is settled that where there is no evidence and nothing to indicate that the principal witnesses for the prosecution were actuated by improper motive, the presumption is that they were not so actuated and their testimonies are entitled to full faith and credit. The weight of the testimony of witnesses is not impaired nor in anyway affected by their relationship to the victim when there is no showing of improper motive on their part. Jurisprudence likewise holds that if an accused had really nothing to do with a crime, it would be against the natural order of events and of human nature, and against the presumption of good faith, that a prosecution witness would falsely testify against him. In the case before us, aside from petitioner's claim that he was framed-up, there is nothing in the records that shows that Armando Maramba had ulterior motives in testifying against him. Necessarily, the testimony of Armando Maramba must be given full credit.

Petitioner argues that he could not have been the assailant because it was simply impossible for him, being a navy man, not to fatally hit private complainant after firing seven shots at close range. In effect, what he is saying is that the bungled killing cannot be the handiwork of an experienced soldier like him. Such an argument does not hold water. In the case of *People v. Mamarion*, we brushed aside the very same argument raised by the accused therein who was an experienced military man. We ruled that an accused is not entitled to an acquittal simply because of his previous, or even present, good moral character and exemplary conduct. The fact that petitioner was a navy man -- a protector of the people -- does not mean that he is innocent of the crime charged or that he is incapable of doing it. This argument fails in light of the identification made by the victim himself and by Armando Maramba that it was petitioner who was the assailant.

The lower court was correct in appreciating treachery in the commission of the crime. There is treachery when the following essential elements are present, *viz:* (a) at the time of the attack, the victim was not in a position to defend himself; and (b) the accused consciously and deliberately adopted the particular means, methods or forms of attack employed by him. The essence of treachery is the swift and unexpected attack on an unarmed victim without the slightest provocation on the part of the victim. It was clearly established that private complainant, while washing his jeep, was suddenly fired upon by petitioner for no reason at all. The suddenness of the shooting and the fact that he was unarmed left private complainant with no option but to run for his life. It is likewise apparent that petitioner consciously and deliberately adopted his mode of attack making sure that private complainant will have no chance to defend himself by reason of the surprise attack. Petitioner's claim that the shooting was not sudden because private complainant was observing him from the time he alighted from the tricycle is belied by the fact that private complainant was not able to run when he was first fired upon. Though private complainant was looking at him, the former was not forewarned by any outward sign that an attack was forthcoming. It was only after the first shot that he felt his life was in danger.

The penalty imposed by the trial court is correct. Under Article 51 of the Revised Penal Code, the penalty lower than two degrees than that prescribed by law for the consummated felony shall be imposed upon the principal in an attempted felony. Under Article 248 of the Revised Penal Code, the penalty for murder is *reclusion perpertua* to death. The penalty two degrees lower is *prision mayor*. Applying the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstances, the minimum of the penalty to be imposed should be within the range of *prision correccional,* and the maximum of the penalty to be imposed should be within the range of *prision mayor* in its medium period.

JOEY GUIYAB y DANAO vs.**PEOPLE OF THE PHILIPPINES**

G.R. No. 152527 October 20, 2005

Facts: Petitioner was charged with Homicide. Prosecution witness Joseph Madriaga testified that on December 12, 1992 at about 9:00 p.m., while the victim Rafael Bacani and he were conversing in front of the Community Center in Tumauini, a certain Juan Sanchez approached and kicked them. As they posed for a fist fight, petitioner Joey Guiyab uttered, " you try and you will see" while brandishing a knife. He recalled that he retreated and jumped over the fence. He then picked up a stone, grabbed Juan Sanchez by the hair and struck him in the head. It was then that petitioner chased him. Failing to catch him, petitioner turned to Rafael who was following them. Petitioner stabbed Rafael once on the right chest. Rafael ran a few meters before he fell. He later on died.

Petitioner raised the defense of alibi. He testified that he was not at Tumauini Cultural and Sports Center at the time the incident happened. He averred that he was farming until 5:00 p.m. at Sitio Bayabo, Camasi, and slept at around 9:00 p.m. in their house at Sitio Bayabo.
The RTC and CA convicted him of the said felony. Guiyab raised the issue of whether or not his identity as the assailant was fully established by the prosecution, claiming that the lone eyewitness learned his name only after it was fed to him by Police Officer Armando Lugo.

Issue: Whether or not the witness must know the name of the accused to prove the latter's identity.

Held: NO.

Reasons: There is nothing in law or jurisprudence which requires, as a condition *sine qua non*, that, for a positive identification of a felon by a prosecution witness to be good, the witness must first know the former personally. The witness need not have to know the name of the accused for so long as he recognizes his face. We ruled that "knowing the identity of an accused is different from knowing his name. Hence, the positive identification of the malefactor should not be disregarded just because his name was supplied to the eyewitness. The weight of the eyewitness account is premised on the fact that the said witness saw the accused commit the crime, and not because he knew his name."

Manuel vs. Pp
GR 165842, Nov. 29, 2005

FACTS:

- Eduardo was charged with bigamy in an Information filed on November 7, 2001
- The prosecution adduced evidence that on July 28, 1975, Eduardo was married to Rubylus Gaña before Msgr. Feliciano Santos in Makati, which was then still a municipality of the Province of Rizal.
- He met the private complainant Tina B. Gandalera in Dagupan City sometime in January 1996.
- Tina finally agreed to marry Eduardo sometime in the first week of March 1996.
- They were married on April 22, 1996 before Judge Antonio C. Reyes, the Presiding Judge of the RTC of Baguio City, Branch 61.
- It appeared in their marriage contract that Eduardo was "single."
- Sometime in January 2001, Eduardo took all his clothes, left, and did not return. Worse, he stopped giving financial support to Tina.
- Sometime in August 2001, Tina became curious and made inquiries from the National Statistics Office (NSO) in Manila where she learned that Eduardo had been previously married.
- She secured an NSO-certified copy of the marriage contract. She was so embarrassed and humiliated when she learned that Eduardo was in fact already married when they exchanged their own vows.
- For his part, Eduardo testified that he married Tina believing that his first marriage was no longer valid because he had not heard from Rubylus for more than 20 years.
- The RTC rendered judgment on July 2, 2002 finding Eduardo guilty beyond reasonable doubt of bigamy.
- Eduardo appealed the decision to the CA.
- On June 18, 2004, the CA rendered judgment affirming the decision of the RTC with modification as to the penalty of the accused. Hence, this petition.

ISSUE: Whether or not Eduardo is liable for bigamy.

HELD: The petition is denied for lack of merit.

Article 349 of the Revised Penal Code, which defines and penalizes bigamy, reads:

> Art. 349. *Bigamy.* – The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The reason why bigamy is considered a felony is to preserve and ensure the juridical tie of marriage established by law. The phrase "or before the absent spouse had been declared presumptively dead by means of a judgment rendered in the proper proceedings" was incorporated in the Revised Penal Code because the drafters of the law were of the impression that "in consonance with the civil law which provides for the presumption of death after an absence of a number of years, **the judicial declaration of presumed death like annulment of marriage** should be a justification for bigamy."

For the accused to be held guilty of bigamy, the prosecution is burdened to prove the felony: (a) he/she has been legally married; and (b) he/she contracts a subsequent marriage without the former marriage having been lawfully dissolved. The felony is consummated on the celebration of the second marriage or subsequent marriage. It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage.

In his commentary on the Revised Penal Code, Albert is of the same view as Viada and declared that there are three (3) elements of bigamy: (1) an undissolved marriage; (2) a new marriage; and (3) fraudulent intention constituting the felony of the act. He explained that:

> … This last element is not stated in Article 349, because it is undoubtedly incorporated in the principle antedating all codes, and, constituting one of the landmarks of our Penal Code, that, where there is no willfulness there is no crime. There is no willfulness if the subject believes that the former marriage has been dissolved; and this must be supported by very strong evidence, and if this be produced, the act shall be deemed not to constitute a crime. Thus, a person who contracts a second marriage in the reasonable and well-founded belief that his first wife is dead, because of the many years that have elapsed since he has had any news of her whereabouts, in spite of his endeavors to find her, cannot be deemed guilty of the crime of bigamy, because there is no fraudulent intent which is one of the essential elements of the crime.

As gleaned from the Information in the RTC, the petitioner is charged with bigamy, a felony by *dolo* (deceit). Article 3, paragraph 2 of the Revised Penal Code provides that there is deceit when the act is performed with deliberate intent. Indeed, a felony cannot exist without intent. Since a felony by *dolo* is classified as an intentional felony, it is deemed voluntary. Although the words "with malice" do not appear in Article 3 of the Revised Penal Code, such phrase is included in the word "voluntary."

Malice is a mental state or condition prompting the doing of an overt act without legal excuse or justification from which another suffers injury. When the act or omission defined by law as a felony is proved to have been done or committed by the accused, the law presumes it to have been intentional. Indeed, it is a legal presumption of law that every man intends the natural or probable consequence of his voluntary act in the absence of proof to the contrary, and such presumption must prevail unless a reasonable doubt exists from a consideration of the whole evidence.

For one to be criminally liable for a felony by *dolo,* there must be a confluence of both an evil act and an evil intent. *Actus non facit reum, nisi mens sit real.*

In the present case, the petitioner is presumed to have acted with malice or evil intent when he married the private complainant. As a general rule, mistake of fact or good faith of the accused is a valid defense in a prosecution for a felony by *dolo*; such defense negates malice or criminal intent. However, ignorance of the law is not an excuse because everyone is presumed to know the law. *Ignorantia legis neminem excusat.* He should have adduced in evidence a decision of a competent court declaring the presumptive death of his first wife as required by Article 349 of the Revised Penal Code, in relation to Article 41 of the Family Code. Such judicial declaration also constitutes proof that the petitioner acted in good faith, and would negate criminal intent on his part when he married the private complainant and, as a consequence, he could not be held guilty of bigamy in such case. The petitioner, however, failed to discharge his burden.

The phrase "or before the absent spouse has been declared presumptively dead by means of a judgment rendered on the proceedings" in Article 349 of the Revised Penal Code was not an aggroupment of empty or useless words. The requirement for a judgment of the presumptive death of the absent spouse is for the benefit of the spouse present, as protection from the pains and the consequences of a second marriage, precisely because he/she could be charged and convicted of bigamy if the defense of good faith based on mere testimony is found incredible.

The requirement of judicial declaration is also for the benefit of the State. Under Article II, Section 12 of the Constitution, the "State shall protect and strengthen the family as a basic autonomous social institution." Marriage is a social institution of the highest importance. Public policy, good morals and the interest of society require that the marital relation should be surrounded with every safeguard and its severance only in the manner prescribed and the causes specified by law. The laws regulating civil marriages are necessary to serve the interest, safety, good order, comfort or general welfare of the community and the parties can waive nothing essential to the validity of the proceedings. A civil marriage anchors an ordered society by encouraging stable relationships over transient ones; it enhances the welfare of the community.

Dean Pineda further states that before, the weight of authority is that the clause "before the absent spouse has been declared presumptively dead x x x" should be disregarded because of Article 83, paragraph 3 of the Civil Code. With the new law, there is a need to institute a summary proceeding for the declaration of the presumptive death of the absentee, otherwise, there is bigamy.

According to Retired Supreme Court Justice Florenz D. Regalado, an eminent authority on Criminal Law, in some cases where an absentee spouse is believed to be dead, there must be a judicial declaration of presumptive death, which could then be made only in the proceedings for the settlement of his estate. Before such declaration, it was held that the remarriage of the other spouse is bigamous even if done in good faith. Justice Regalado opined that there were contrary views because of the ruling in *Jones* and the provisions of Article 83(2) of the Civil Code, which, however, appears to have been set to rest by Article 41 of the Family Code, "which requires a summary hearing for the declaration of presumptive death of the absent spouse before the other spouse can remarry."

CALIMUTAN VS. PEOPLE OF THE PHILIPPINES
(G.R. No. 152133 February 9, 2006)

FACTS: Rollie Calimutan was charged in the RTC with the crime of homicide. It was alleged that on or about February 4, 1996, in the morning thereof, in Municipality of Aroroy, Province of Masbate, the accused with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and throw a stone at Phillip Cantre, hitting him at the back left portion of his body, resulting in laceration of spleen due to impact which caused his death a day after. During the arraignment on 21 May 1997, petitioner Calimutan pleaded not guilty to the crime of homicide charged against him.

It was alleged by the witness that Calimutan, after seeing that the victim was punching the former's companion, he puckied up a stone, as big as a man's fist, and threw at the victim hitting him at the left side of his back..

Victim Cantre, after the fight and had gone home, complained of backache and also of stomachache, and was unable to eat. By nighttime, victim Cantre was alternately feeling cold and then warm. He was sweating profusely and his entire body felt numb. His family would have wanted to bring him to a doctor but they had no vehicle. For the last time, he complained of backache and stomachache, and shortly thereafter, he died.

Right after his death, victim Cantre was examined by Dr. Conchita S. Ulanday, the Municipal Health Officer of Aroroy, Masbate. The Post-Mortem Examination Report and Certification of Death, issued and signed by Dr. Ulanday, stated that the cause of death of victim Cantre was cardio-respiratory arrest due to suspected food poisoning.

Unsatisfied with the findings of Dr. Ulanday, the Cantre family requested for an exhumation and autopsy of the body of the victim Cantre by the NBI. The exhumation and autopsy of the body of the victim Cantre was conducted by Dr. Ronaldo B. Mendez, after which, he reported that the cause of death was a traumatic injury of the abdomen.

The RTC rendered its Decision convicting Calimutan of the crime homicide; pronouncing that the throwing of the stone to the victim which was a retaliatory act can be considered unlawful, hence the accused can be held criminally liable under paragraph 1 of Art. 4 of the Revised Penal Code.

The act of throwing a stone from behind which hit the victim at his back on the left side was a treacherous one and the accused committed a felony causing physical injuries to the victim. The physical injury of hematoma as a result of the impact of the stone resulted in the laceration of the spleen causing the death of the victim. The accused is criminally liable for all the direct and natural consequences of this unlawful act even if the ultimate result had not been intended.

The CA sustained the conviction of homicide. Hence, the present petition.

ISSUE: W/N Calimutan shall be convicted of the crime homicide.

Ruling: While the SC is in accord with the factual findings of the RTC and the Court of Appeals and affirms that there is ample evidence proving that the death of the victim Cantre was caused by his lacerated spleen, an injury which resulted from being hit by the stone thrown at him by petitioner Calimutan, this Court, nonetheless, is at variance with the RTC and the Court of Appeals as to the determination of the appropriate crime or offense for which the petitioner should have been convicted for.

Article 3 of the Revised Penal Code classifies felonies according to the means by which they are committed, in particular: (1) intentional felonies, and (2) culpable felonies. These two types of felonies are distinguished from each other by the existence or absence of malicious intent of the offender –

In intentional felonies, the act or omission of the offender is *malicious*. In the language of Art. 3, the act is performed with deliberate intent (with malice). The offender, in performing the act or in incurring the omission, *has the intention to cause an injury* to another. In culpable felonies, the act or omission of the offender is *not* malicious. The injury caused by the offender to another person is "unintentional, it being simply the incident of another act performed *without* malice." (People vs. Sara, 55 Phil. 939). As stated in Art. 3, the wrongful act results from imprudence, negligence, lack of foresight or lack of skill.

In the Petition at bar, the Court cannot, in good conscience, attribute to petitioner Calimutan any malicious intent to injure, much less to kill, the victim Cantre; and in the absence of such intent, this Court cannot sustain the conviction of petitioner Calimutan for the intentional crime of homicide, as rendered by the RTC and affirmed by the Court of Appeals. Instead, this Court finds petitioner Calimutan guilty beyond reasonable doubt of the culpable felony of ***reckless imprudence resulting in homicide*** under Article 365 of the Revised Penal Code**.**

Article 365 of the Revised Penal Code expressly provides for the definition of reckless imprudence –

Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place.

It should be remembered that the meeting of the victim Cantre and witness Sañano, on the one hand, and petitioner Calimutan and his helper Bulalacao, on the other, was a chance encounter as the two parties were on their way to different destinations. The victim Cantre and witness Sañano were on their way home from a drinking spree in Crossing Capsay, while petitioner Calimutan and his helper Bulalacao were walking from the market to Crossing Capsay. While the evidence on record suggests that a running grudge existed between the victim Cantre and Bulalacao, it did not establish that there was likewise an existing animosity between the victim Cantre and petitioner Calimutan.

PEOPLE OF THE PHILIPPINES, vs. EDMAR AGUILOS, ODILON LAGLIBA Y ABREGON and RENE GAYOT PILOLA, accused, RENE GAYOT PILOLA, appellant.
[G.R. No. 121828. June 27, 2003]

Facts: On June 7, 1998, Edmar Aguilos, Odilon Lagliba y Abregon and appellant Rene Gayot Pilola were charged with murder. Of the three accused, Odilon Lagliba was the first to be arrested and tried, and subsequently convicted of murder. The decision of the trial court became final and executory. Accused Edmar Aguilos remains at large while accused Ronnie Diamante reportedly died a month after the incident. Meanwhile, herein appellant Rene Gayot Pilola was arrested. He was arraigned on March 9, 1994, assisted by counsel, and pleaded not guilty to the charge. The prosecution failed to prove the conspiracy; hence the accused appellant contends that he that for one to be a conspirator, his participation in the criminal resolution of another must either precede or be concurrent with the criminal acts. He asserts that even if it were true that he was present at the *situs criminis* and that he stabbed the victim, it was Odilon who had already decided, and in fact fatally stabbed the victim. He could not have conspired with Odilon as the incident was only a chance encounter between the victim, the appellant and his

co-accused. In the absence of a conspiracy, the appellant cannot be held liable as a principal by direct participation.

Issue: Whether or not accused-appellant is guilty of the crime charged.

Held: Even if two or more offenders do not conspire to commit homicide or murder, they may be held criminally liable as principals by direct participation if they perform overt acts which mediately or immediately cause or accelerate the death of the victim, applying Article 4, paragraph 1 of the Revised Penal Code:

> *Art. 4. Criminal liability. – Criminal liability shall be incurred:*
>
> *1. By any person committing a felony (delito) although the wrongful act done be different from that which he intended.*

In such a case, it is not necessary that each of the separate injuries is fatal in itself. It is sufficient if the injuries cooperated in bringing about the victim's death. Both the offenders are criminally liable for the same crime by reason of their individual and separate overt criminal acts. Absent conspiracy between two or more offenders, they may be guilty of homicide or murder for the death of the victim, one as a principal by direct participation, and the other as an accomplice, under Article 18 of the Revised Penal Code:

> *Art. 18. Accomplices. – Accomplices are the persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.*

To hold a person liable as an accomplice, two elements must concur: (a) the community of criminal design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (b) the performance of previous or simultaneous acts that are not indispensable to the commission of the crime. Accomplices come to know about the criminal resolution of the principal by direct participation after the principal has reached the decision to commit the felony and only then does the accomplice agree to cooperate in its execution. Accomplices do not decide whether the crime should be committed; they merely assent to the plan of the principal by direct participation and cooperate in its accomplishment. However, where one cooperates in the commission of the crime by performing overt acts which by themselves are acts of execution, he is a principal by direct participation, and not merely an accomplice.

In this case, Odilon all by himself initially decided to stab the victim. The appellant and Ronnie were on the side of the street. However, while Odilon was stabbing the victim, the appellant and Ronnie agreed to join in; they rushed to the scene and also stabbed the victim with their respective knives. The three men simultaneously stabbed the hapless victim. Odilon and the appellant fled from the scene together, while Ronnie went after Julian. When he failed to overtake and collar Julian, Ronnie returned to where Joselito fell and hit him with a hollow block and a broken bottle. Ronnie then hurriedly left. All the overt acts of Odilon, Ronnie and the appellant before, during, and after the stabbing incident indubitably show that they conspired to kill the victim.

The victim died because of multiple stab wounds inflicted by two or more persons. There is no evidence that before the arrival of Ronnie and the appellant at the situs criminis, the victim was already dead. It cannot thus be argued that by the time the appellant and Ronnie joined Odilon in stabbing the victim, the crime was already consummated.

All things considered, we rule that Ronnie and the appellant conspired with Odilon to kill the victim; hence, all of them are criminally liable for the latter's death. The appellant is not merely an accomplice but is a principal by direct participation.

Even assuming that the appellant did not conspire with Ronnie and Odilon to kill the victim, the appellant is nevertheless criminally liable as a principal by direct participation. The stab wounds inflicted by him cooperated in bringing about and accelerated the death of the victim or contributed materially thereto.

Briñas vs. People
G.R. No. L-30309 November 25, 1983

Facts: Accused Victor Milan, Clemente Briñas and Hermogenes Buencamino, being then persons in charge of passenger Train No. 522-6 of the Manila Railroad Company, then running from Tagkawayan to San Pablo City, as engine driver, conductor and assistant conductor, respectively, wilfully and unlawfully drove and operated the same in a negligent, careless and imprudent manner, without due regard to existing laws, regulations and ordinances, that although there were passengers on board the passenger coach, they failed to provide lamps or lights therein, and failed to take the necessary precautions for the safety of passengers and to prevent accident to persons and damage to property, causing by such negligence, carelessness and imprudence.

Upon approaching Barrio Lagalag in Tiaong at about 8:00 p.m. of that same night, the train slowed down and the conductor shouted 'Lusacan', 'Lusacan'. Thereupon, 55-year old Martina Bool walked towards the left front door, carrying 3-year old Emelita Gesmundo (granddaughter) with one hand and holding her baggage with the other. When Martina and Emelita were near the door, the train suddenly picked up speed. As a result the old woman and the child stumbled and they were seen no more. It took three minutes more before the train stopped at the next barrio, Lusacan, and the victims were not among the passengers who disembarked thereat .

Issue: WON the proximate cause of the death of the victims was the premature and erroneous announcement of petitioner' appelant Briñas.

Held: Yes.SC held that the proximate cause of the death of the victims was the premature and erroneous announcement of petitioner' appelant Briñas.The announcement prompted the victims to stand and proceed to the nearest exit. Any negligence of the victims was at most contributory and does not exculpate the accused from criminal liability.

Petitioner-appellant failed to show any reason why the train suddenly resumed its regular speed. The announcement was made while the train was still in Barrio Lagalag. It was negligence on the conductor's part to announce the next flag stop when said stop was still a full three minutes ahead. Without said announcement, the victims would have been safely seated in their respective seats when the train jerked as it picked up speed. The connection between the premature and erroneous announcement of petitioner-appellant and the deaths of the victims is direct and natural, unbroken by any intervening efficient causes.

INTOD vs. COURT OF APPEALS
(GR. No. 103119 October 29, 1992)

FACTS: Sulpicio Intod and 3 other men went to Salvador Mandaya's house to ask him to go with them to the house of Bernardina Palangpangan. Thereafter, the group had a meeting with Aniceto Dumalagan who told Mandaya that he wanted Palangpangan to be killed because of a land dispute between them and that Mandaya should accompany the 4 men otherwise he would also be killed. At 10:00 p.m. of that same day, Intod and companions, all armed with firearms arrived at Palangpangan's house. Thereafter, petitioner and his companion fired at bedroom of Palangpangan. It turned out, however, that Palangpangan was in another city and her home was then occupied by her son-in-law and his family. No one was in the room when the accused fired the shots.

The RTC convicted Intod of attempted murder. Said decision was affirmed by the CA.

Petitioner Intod seeks a modification of the judgment on the ground that he is only liable for an impossible crime, citing Art. 4(2) of the RPC. He contends that, Palangpangan's absence from her room on the night he and his companions riddled it with bullets made the crime inherently impossible.

Respondent, on the other hand, argues that the crime was not impossible instead the facts were sufficient to constitute an attempt and to convict Intod for attempted murder. Respondent likewise alleged that there was intent.

ISSUE: WON petitioner is liable only for an impossible crime?

HELD: YES. Under Article 4(2) of the RPC, the act performed by the offender cannot produce an offense against person or property because: 1) the commission of the offense is inherently impossible of accomplishment; or 2) the means employed is either a) inadequate or b) ineffectual.

To be impossible under this clause, the act intended by the offender must be by its nature one impossible of accomplishment. There must be either 1) legal impossibility, or 2) physical impossibility of accomplishing the intended act in order to qualify the act as an impossible crime.

Legal impossibility occurs where the intended act, even if complete would not amount to a crime. Thus: legal impossibility would apply to those circumstances where 1) the motive, desire and expectation is to perform an act in violation of the law; 2) there is intention to perform the physical act; 3) there is a performance of the intended physical act; and 4) the consequence resulting from the intended act does not amount to a crime. The impossibility of killing a person already dead falls in this category.

On the other hand, factual impossibility occurs when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime. One example is the man who puts his hand in the coat pocket of another with the intention to steal the latter's wallet and finds the pocket empty.

The case at bar belongs to this category. Petitioner shoots the place where he thought his victim would be, although in reality, the victim was not present in said place and thus, the petitioner failed to accomplish his end.

The factual situation in the case at bar presents a physical impossibility which render the intended crime impossible of accomplishment. And under Art. 4, paragraph 2 of the RPC, such is sufficient to make the act an impossible crime.

Intod v. CA, et al.,

215 SCRA 52.

In this case, four culprits, all armed with firearms and with intent to kill, went to the intended victim's house and after having pinpointed the latter's bedroom, all four fired at and riddled said room with bullets, thinking that the intended victim was already there as it was about 10:00 in the evening. It so happened that the intended victim did not come home on the evening and so was not in her bedroom at that time. Eventually the culprits were prosecuted and convicted by the trial court for attempted murder. The Court of Appeals affirmed the judgment.

But the Supreme Court modified the same and held the petitioner liable only for the so-called impossible crime. As a result, petitioner accused was sentenced to imprisonment of only six months of arresto mayor for the felonious act he committed with intent to kill: this despite the destruction done to the intended victim's house. Somehow, the decision depreciated the seriousness of the act committed, considering the lawlessness by which the culprits carried out the intended crime, and so some members of the bench and bar spoke out against the soundness of the ruling.

Some asked questions: Was it really the impossibility of accomplishing the killing that brought about its non-accomplishment? Was it not purely accidental that the intended victim did not come home that evening and, thus, unknown to the culprits, she was not in her bedroom at the time it was shot and riddled with bullets? Suppose, instead of using firearms, the culprits set fire on the intended victim's house, believing she was there when in fact she was not, would the criminal liability be for an impossible crime?

PEOPLE vs.**BUSTINERA**
(G.R. 148233 June 8, 2004)

Criminal Liability

Facts: The appellant was adjudged guilty of Quilified Theft based on this information:

That on or about the 25th day of December up to the 9th day of January, 1997, in Quezon City, Philippines, the said accused being then employed as one of the taxi Drivers of Elias S. Cipriano, an Operator of several taxi cabs and as such has free access to the taxi he was drivimg, did then and there willfully, unlawfully and feloniously with intent to gain, with grave abuse of confidence reposed upon him by his employer and without the knowledge and consent of the owner thereof, take, steal and carry away a Daewoo Racer GTE Taxi with Plate No. PWH-266 worth ₱303,000.00 belonging to Elias S. Cipriano, to the damage and prejudice of the said offended party in the amount of ₱303,000.00.

The appellant contends that the reason why he was unable to return the taxi was because at that time he could not remit the required boundary fee of Php 780.00 his earnings that day not having permitted it; and that there was no intent to gain since the taking of the taxi was not permanent in character, he having returned it.

Issue: Whether or not the act of Bustinera was without any intent to gain thus not constituting the crime of qualified theft and carnapping?

Decision: No. Intent to gain or *animus lucrandi* is an internal act, presumed from the unlawful taking of the motor vehicle.[51] Actual gain is irrelevant as the important consideration is the intent to gain. The term "gain" is not merely limited to pecuniary benefit but also includes the benefit which in any other sense may be derived or expected from the act which is performed. Thus, the mere use of the thing which was taken without the owner's consent constitutes gain.

In *Villacorta v. Insurance Commission* which was reiterated in *Association of Baptists for World Evangelism, Inc. v. Fieldmen's Insurance Co, Inc*., Justice Claudio Teehankee (later Chief Justice), interpreting the theft clause of an insurance policy, explained that, when one takes the motor vehicle of another without the latter's consent **even if the motor vehicle is later returned**, there is theft, there being intent to gain as the use of the thing unlawfully taken constitutes gain.

ADELMO PEREZ Y AGUSTIN vs. **COURT OF APPEALS and PEOPLE OF THE PHILIPPINES**
G.R. No. 143838 May 9, 2002

Facts: The accused sometime on April 14, 1988, without the permission of anyone, entered into the room of ulita Tria and once inside, embraced and kissed her on the neck, held and mashed her breast and compelled her to lie down, and thereafter kissed her lips and neck and with the intent of having carnal knowledge with her, touched her sex organ and tried to remove her panties thereby commencing the commission a crime. Directly by overt acts but said accused did not accomplish his purpose, that is, to have a carnal knowledge with her, it was not because of his spontaneous and voluntary desistance but because the said Julita Tria succeeding in resisting his criminal attempt and also due to the timely arrival of her mother to the damage and prejudice of the said Julita Tria y Balagao. The trial court rendered judgment finding petitioner guilty of attempted rape. The appellate court, finding the appeal to be unmeritorious, affirmed petitioner's conviction.

Issue: Whether or not the crime committed by the Petitioner was attempted rape.

Held: NO. The Court is not inclined to deviate from the courts' findings that petitioner, against the will of the complainant, performed sexual acts on the latter. However, a careful review of the records of the case shows that the crime committed by petitioner was acts of lasciviousness not attempted rape.

Under Article 6 of the Revised Penal Code, there is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the crime of rape, penetration is an essential act of execution to produce the felony. Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed.

There is no showing in this case that petitioner's sexual organ had even touched complainant's vagina nor any part of her body. Petitioner's acts of lying on top of the complainant, embracing and kissing her, mashing her breasts, inserting his hand inside her panty and touching her sexual organ, while admittedly obscene and detestable acts, do not constitute attempted rape absent any showing that petitioner actually commenced to force his penis into the complainant's sexual organ. Rather, these acts constitute acts of lasciviousness. Although the information filed against petitioner was for attempted rape, he can be convicted of acts of lasciviousness because the crime of acts of lasciviousness is included in rape. Petitioner Adelmo Perez y Agustin is found guilty beyond reasonable doubt of the crime of acts of lasciviousness, as defined and penalized under Article 336 of the Reviszed Penal Code.

BALEROS vs. PEOPLE

Facts: That about 1:50 in the morning or sometime thereafter of 13 December 1991 in Manila and within the jurisdiction of this Honorable Court, the above-named accused, by forcefully covering the face of Martina Lourdes T. Albano with a piece of cloth soaked in chemical with dizzying effects, did then and there willfully, unlawfully and feloniously commenced the commission of rape by lying on top of her with the intention to have carnal knowledge with her but was unable to perform all the acts of execution by reason of some cause or accident other than his own spontaneous desistance, said acts being committed against her will and consent to her damage and prejudice.

In this Motion for Partial Reconsideration, petitioner-movant Renato Baleros, Jr., through counsel, seeks reconsideration of our Decision of February 22, 2006, acquitting him of the crime of attempted rape, thereby reversing an earlier decision of the Court of Appeals, but adjudging him guilty of light coercion and sentencing him to 30 days of arresto menor and to pay a fine of P200.00, with the accessory penalties thereof and to pay the costs. It is petitioner's submission that his conviction for light coercion under Information for attempted rape Moreover, the circumstances stated in the information do not constitute the elements of the said crime. Accused-appellant, therefore, cannot be convicted of unjust vexation.

Issue: Whether the offender's act causes annoyance, irritation, torment, distress, or disturbance to the mind of the person to

whom it is directed, which is a paramount question in a prosecution forum just vexation?

Held: For being a mere rehash of those already passed upon and found to be without merit in the Decision sought to be reconsidered, the other grounds relied upon by the petitioner in his Motion for Partial Reconsideration in support of his plea for a complete acquittal need not be belaboured anew. WHEREFORE, the motion under consideration is DENIED with FINALITY.

PP v Almazan
[G.R. Nos. 138943-44. September 17, 2001]

Facts: Vicente Madriaga and a certain Allan were playing chess, and their spectator's were Vicente's son Noli, who was carrying his 2-year old daughter, Vicente's grandson Noel, and a neighbor named Angel Soliva. While the game was underway, Almazan unexpectedly arrived and brandished a .38 caliber revolver in front of the group. Almazan's fighting cocks had just been stolen and he suspected Angel, one of the spectators, to be the culprit. He aimed his gun at Angel and pulled the trigger. It did not fire. He tried again, but again it failed.Vicente Madriaga stood up and tried to calm down Henry, but the latter refused to be Angel ran away and Henry aimed his gun instead at Noli and shot him at the left side of his stomach sending him immediately to the ground. Henry then turned on Noel and shot him on the left thigh. Noel managed to walk lamely but only to eventually fall to the ground. Thereafter, Vicente Madriaga called on his neighbors who brought Noli and Noel to the hospital. Noli however died before reaching the hospital, while Noel survived his injuries. The trial court declared accused-appellant Henry Almazan guilty of murder and frustrated murder.

Issue: Whether or not Almazan was guilty of frustrated murder.

Held: The accused-appellant should be held liable for attempted murder, not frustrated murder. For the charge of frustrated murder to flourish, the victim should sustain a fatal wound that could have caused his death were it not for timely medical assistance. This is not the case before us. The court *a quo* anchored its ruling on the statement of Dr. Ticman on cross-examination that the wound of Noel could catch infection or lead to his death if not timely and properly treated. However, in his direct testimony, Dr. Ticman declared that the wound was a mere minor injury for which Noel, after undergoing treatment, was immediately advised to go home. He even referred to the wound as a slight physical injury that would heal within a week and for which the victim was in no danger of dying. Clear as the statement is, coupled with the fact that Noel was indeed immediately advised to go home as he was not in any danger of death, we have no reason to doubt the meaning and implications of Dr. Ticman's statement. His statement that Noel could catch infection was based on pure speculation rather than on the actual nature of the wound which was a mere minor injury, hence, not fatal. According to jurisprudence, if the victim was wounded with an injury that was not fatal, and could not cause his death, the crime would only be attempted. The observation that the conviction should be for slight physical injuries only is likewise improper as the accused-appellant was motivated by the same impetus and intent, i.e., to exact vengeance and even kill, if necessary, when he shot Noel Madriaga. The fact that the wound was merely a minor injury which could heal in a week becomes inconsequential.

People of the Philippines vs. Gonzales, Jr.
G.R. No. 139542
June 21, 2001

FACTS: On October 31, 1998 at about 2:30 p.m., the families of Noel Andres and herein accused-appellant were both on their way to the exit of the Loyola Memorial Park. At the intersection point, the cars they were driving almost collided. Later on, when Andres found an opportunity, he cut Gonzalez off, disembarked from his car and went over to Gonzales'. Altercation then ensued. Meanwhile, Dino Gonzalez, son of Inocencio, entered the scene in defense of his father. Fearing that his son was in danger, Gonzalez took out the gun which was already in his car compartment. Upon seeing his father, Gonzalez's daughter, Trisha, hugged her father and in the process held his hand holding the gun. The appellant tried to free his hand and with Trisha's substantial body weight pushing against him the appellant lost his balance and the gun accidentally fired. Feliber Andres, Noel's wife, was shot to death while their son, Kenneth and nephew Kevin were wounded.

The trial court found the accused guilty of the complex crime of murder and two counts of frustrated murder and accordingly sentenced him to death. Accused were also ordered to pay for civil liabilities to the heirs of Mrs. Andres, and the parents of Kevin Valdez.

Hence, an automatic review or this case.

ISSUES:

1. Whether or not the trial court committed reversible error when it found treachery was present in the commission of the crime.

2. Whether or not the trial court committed reversible error when it failed to appreciate voluntary surrender, passion and obfuscation, incomplete defense of a relative and lack of intent to commit so grave a wrong be considered as mitigating circumstances.

RULINGS:

1. It has been consistently held by this court that chance encounters, impulse killing or crimes committed at the spur of the moment or that were preceded by heated altercations are generally not attended by treachery for lack of opportunity of the accused to deliberately employ a treacherous mode of attack. Thus, the sudden attack made by the accused due to his infuriation by reason of the victim's provocation was held to be without treachery. Sudden attacks made by the accused preceded by curses and insults by the victim or acts taunting the accused to retaliate or the rebellious or aggressive behavior of the victim were held to be without treachery as the victim was sufficiently forewarned of reprisal. For the rules on treachery to apply the sudden attack must have been preconceived by the accused, unexpected by the victim and without provocation on the part of the latter. We affirm the recommendation of the Solicitor-General that the shooting was not attended by treachery and accordingly the crime committed for the death of Feliber Andres is homicide and not murder.

2. The mitigating circumstances of voluntary surrender, passion and

obfuscation, incomplete defense of a relative and lack of intent to commit so grave a wrong, pleaded by the defense, were not convincingly proved and none can be considered in the imposition of penalties. The testimony of prosecution witness contradicts the appellant's pretense of voluntary surrender.

The mitigating circumstance of passion and obfuscation is also not obtaining. Provocation must be sufficient to excite a person to commit the wrong committed and that the provocation must be commensurate to the crime committed. The sufficiency of provocation varies according to the circumstances of the case. The aggressive behavior of Noel Andres towards the appellant and his son may be demeaning or humiliating but it is not sufficient provocation to shoot at the complainant's vehicle.

The plea for the appreciation of the mitigating circumstance of incomplete defense of a relative is also unmeritorious since the act of Andres in cursing and shouting at the appellant and his son do not amount to an unlawful aggression against them, Dino Gonzalez.

Finally, the plea for the appreciation of the mitigating circumstance of lack of intent to commit so grave a wrong is likewise devoid of merit. This mitigating circumstance is obtaining when there is a notable disparity between the means employed by the accused to commit a wrong and the resulting crime committed. The intention of the accused at the time of the commission of the crime is manifested from the weapon used, the mode of attack employed and the injury sustained by the victim. The appellant's use of a gun, although not deliberately sought nor employed in the shooting, should have reasonably placed the appellant on guard of the possible consequences of his act. The use of a gun is sufficient to produce the resulting crimes committed.

PEOPLE *vs.* ACA-AC
[G.R. No. 142500. April 20, 2001]

Facts: Accused was charged of 4 counts of rape by an 11-year old minor. On three cases, the trial court acquitted the accused due to reasonable doubt. But on the last one count, it was established that the accused indeed had sexual intercourse with the victim against her will. But that there was no penetration of the penis into the vagina of the victim but only up to the labia minora (mouth of the vagina until the clitoris). Such that her hymen was still intact. Thereby the accused was convicted not of rape but of Frustrated Rape.

Issue: Is the trial court correct in convicting the accused for Frustrated Rape?

Ruling: The ruling of Frustrated Rape is not correct. Rape is either attempted or consummated only. For the consummation of rape, perfect penetration is not essential. Any penetration of the female organ by the male organ is sufficient. Entry of the labia or lips of the female organ, without rupture of the hymen or laceration of the vagina, is sufficient to warrant conviction. The mere touching of the labia or pudendum by the male organ is enough to consummate the crime of rape. It is enough that there is a penetration, however slight, of the external genitalia. It bears emphasis that a broken hymen or laceration of any part of the female genital is not a pre-requisite for a conviction for rape.

(is there frustrated theft?)

VALENZUELA VS. PP
G.R. 160188

FACTS: Petitioner Valenzuela and Calderon were sighted outside the Super Sale Club, a supermarket, by Lorenzo Lago, a security guard who was then manning his post at the open parking area of the supermarket. Lago saw petitioner, who was wearing an identification card with the mark "Receiving Dispatching Unit (RDU)," hauling a push cart with cases of detergent of the well-known "*Tide*" brand. Petitioner unloaded these cases in an open parking space, where Calderon was waiting. Petitioner then returned inside the supermarket, and after five (5) minutes, emerged with more cartons of *Tide Ultramatic* and again unloaded these boxes to the same area in the open parking space. Petitioner then left the parking area and haled a taxi. He boarded the cab and directed it towards the parking space where Calderon was waiting. Calderon loaded the cartons of *Tide Ultramatic* inside the taxi, then boarded the vehicle. All these acts were eyed by Lago, who proceeded to stop the taxi as it was leaving the open parking area. When Lago asked petitioner for a receipt of the merchandise, petitioner and Calderon reacted by fleeing on foot, but Lago fired a warning shot to alert his fellow security guards of the incident. Petitioner and Calderon were apprehended at the scene, and the stolen merchandise recovered. The filched items seized from the duo were four (4) cases of *Tide Ultramatic*, one (1) case of *Ultra* 25 grams, and three (3) additional cases of detergent, the goods with an aggregate value of ₱12,090.00.

The Regional Trial Court convicted both petitioner and Calderon of the crime of consummated theft.
Before the Court of Appeals, petitioner argued that he should only be convicted of frustrated theft since at the time he was apprehended, he was never placed in a position to freely dispose of the articles stolen. The Court of Appeals rejected this contention and affirmed petitioner's conviction. Hence the present Petition for Review.

ISSUE: Whether petitioner should be convicted of frustrated theft rather than consummated theft.

HELD: The determination of whether a crime is frustrated or consummated necessitates an initial concession that all of the acts of execution have been performed by the offender. The critical distinction instead is whether the felony itself was actually produced by the acts of execution. The determination of whether the felony was "produced" after all the acts of execution had been performed hinges on the particular statutory definition of the felony.

The following are elements of theft as provided for in Article 308 of the Revised Penal Code, namely: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things. Theft is already "produced" upon the "tak[ing of] personal property of another without the latter's consent."

U.S. v. Adiao apparently supports that notion, where, in support of its conclusion that the theft was consummated, the Court

cited three (3) decisions of the Supreme Court of Spain. In those cases, the criminal actors had been able to obtain full possession of the personal property prior to their apprehension. Synthesis of the *3 decisions* is in order. The determinative characteristic as to whether the crime of theft was produced is the ability of the actor "to freely dispose of the articles stolen, even if it were only momentary." Such conclusion was drawn from an 1888 decision of the Supreme Court of Spain which had pronounced that in determining whether theft had been consummated. No legal reference or citation was offered for this averment, whether the Spanish cases or authorities who may have bolstered the conclusion. For such reasons, the Spanish cases/ authorities cannot be considered. Even if such were offered, given that there has been no reaffirmation by the SC, such rulings cannot be applied.

Accordingly, it would not be intellectually disingenuous for the Court to look at the question from a fresh perspective, as the SC is not bound by the opinions of the respected Spanish commentators, conflicting as they are, to accept that theft is capable of commission in its frustrated stage. With such considerations, the SC can only conclude that under Article 308 of the Revised Penal Code, theft cannot have a frustrated stage. Theft can only be attempted or consummated.

Pp vs. Diño was decided by the Court of Appeals in 1949, some 31 years after *Adiao* and 15 years before *Pp vs. Flores*. The accused therein, a driver employed by the United States Army, had driven his truck into the port area of the South Harbor, to unload a truckload of materials to waiting U.S. Army personnel. After he had finished unloading, accused drove away his truck from the Port, but as he was approaching a checkpoint of the Military Police, he was stopped by an M.P. who inspected the truck and found therein three boxes of army rifles. The accused later contended that he had been stopped by four men who had loaded the boxes with the agreement that they were to meet him and retrieve the rifles after he had passed the checkpoint. The trial court convicted accused of consummated theft, but the Court of Appeals modified the conviction, holding instead that only frustrated theft had been committed.

In doing so, the appellate court pointed out that the evident intent of the accused was to let the boxes of rifles "pass through the checkpoint, perhaps in the belief that as the truck had already unloaded its cargo inside the depot, it would be allowed to pass through the check point without further investigation or checking." This point was deemed material and indicative that the theft had not been fully produced, for the Court of Appeals pronounced that "the fact determinative of consummation is the ability of the thief to dispose freely of the articles stolen, even if it were more or less momentary."

Diño thus laid down the theory that the ability of the actor to freely dispose of the items stolen at the time of apprehension is determinative as to whether the theft is consummated or frustrated. This theory was applied again by the Court of Appeals some 15 years later, in *Pp vs. Flores.*

The accused therein, a checker employed by the Luzon Stevedoring Company, issued a delivery receipt for one empty sea van to the truck driver who had loaded the purportedly empty sea van onto his truck at the terminal of the stevedoring company. The truck driver proceeded to show the delivery receipt to the guard on duty at the gate of the terminal. However, the guards insisted on inspecting the van, and discovered that the "empty" sea van had actually contained other merchandise as well. The accused was prosecuted for theft qualified by abuse of confidence, and found himself convicted of the consummated crime. Before the Court of Appeals, accused argued in the alternative that he was guilty only of attempted theft, but the appellate court pointed out that there was no intervening act of spontaneous desistance on the part of the accused that "literally frustrated the theft." However, the Court of Appeals, explicitly relying on *Diño*, did find that the accused was guilty only of frustrated, and not consummated, theft.

A problem clearly emerges with the *Diño/Flores* dictum. **The ability of the offender to freely dispose of the property stolen is not a constitutive element of the crime of theft**. It finds no support or extension in Article 308, whether as a descriptive or operative element of theft or as the *mens rea* or *actus reus* of the felony.

We are satisfied beyond reasonable doubt that the taking by the petitioner was completed in this case. With intent toa gain, he acquired physical possession of the stolen cases of detergent for a considerable period of time that he was able to drop these off at a spot in the parking lot, and long enough to load these onto a taxicab.

Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft, if at all.

With these considerations, we can only conclude that under Article 308 of the Revised Penal Code, theft cannot have a frustrated stage. Theft can only be attempted or consummated.

The petition must be denied. Under the Revised Penal Code, there is no crime of frustrated theft.

GR 114261, Feb 10, 2000
PEOPLE OF THE PHILIPPINES vs. FABRO
(conspiracy to commit a felony, not punishable; exception)

FACTS: Appellant Fabro together with her common-law husband Donald Pilay and Irene Martin, was charged with the crime of "violation of Section 21 (b) Art. IV, in relation to Section 4, Art. II of Republic Act No. 6425. They conspired and sold/delivered to PO2 APDUHAN, who acted as poseur-buyer, one (1) kilo of dried marijuana leaves. Two concerned individuals, Gloria and Emma Borce, reported to Chief Inspector Evasco that in Baguio City, was engaged in selling marijuana. They added that sales usually took place between 5:00 and 6:00 p.m. Acting on that report, Chief Inspector Evasco organized two teams to conduct a buy-bust operation. Senior Inspector Mabanag was to be the overall team leader with Batag as his assistant. SPO2 Ellonito Apduhan was designated poseur-buyer in the operation. After briefing the group, Chief Inspector Evasco gave P600.00 as purchase money to Apduhan. The amount consisted of six P100-bills with their serial numbers duly listed down.

As Apduhan, Gloria and Emma drew near Pilay's residence, appellant met them. Donald Pilay who appeared drunk was inside the house by the main door. Gloria and Emma introduced Apduhan to appellant as a stranger in the place who wanted to buy marijuana.

Appellant told them that a kilo would cost them P700.00 but she agreed to Apduhan's price of P600.00. After Apduhan had ordered a kilo of the contraband, appellant told them to wait a while. Appellant then went to a house just behind her own. After a few minutes, she returned in the company of another woman who was later identified as Irene Martin. Appellant handed the stuff to Apduhan. Her companion, Irene Martin, demanded payment therefor. Apduhan gave her the P600.00. After ascertaining that it was a brick of marijuana, he made the pre-arranged signal of lighting his cigarette. Immediately, the back-up team rushed towards their direction. However, before the team could reach them, Irene Martin ran away. Apduhan held appellant so that she could not escape. Donald Pilay was also arrested.

ISSUE: Whether there is conspiracy in the commission of the crime

RULING: Appellant's contention that Irene Martin was the real culprit being the source of the contraband does not in any way absolve her of the crime of selling marijuana. While it is true that it was Irene Martin who took the money, appellant was the one who negotiated with the poseur-buyers; fetched her co-accused; carried and handed over the marijuana to Apduhan. The acts of Martin and appellant clearly show a unity of purpose in the consummation of the sale of marijuana. In other words, between Martin and appellant, conspiracy in the commission of the crime was indubitably proven by the prosecution.

Section 21 (b) of R.A. 6425 punishes the mere conspiracy to commit the offense of selling, delivering, distributing and transporting of dangerous drugs. **Conspiracy herein refers to the mere agreement to commit the said acts and not the actual execution thereof. <u>While the rule is that a mere conspiracy to commit a crime without doing any overt act is not punishable, the exception is when such is specifically penalized by law, as in the case of Section 21 of Republic Act 6425.</u> Conspiracy as crime should be distinguished from conspiracy as a manner of incurring criminal liability the latter being applicable to the case at bar.**

EXEMPTING CIRCUMSTANCES – accident.

PEOPLE VS. CONCEPCION
386 SCRA 74

FACTS: Between 10:00 and 11:00 in the evening of November 24,1997, Lorenzo Galang, a resident of their barangay, got involved in a quarrel at the town plaza. He was brought to the barangay hall for questioning. Shortly after, appellant Rodolfo Concepcion arrived and fired his rifle twice or thrice past the ears of Lorenzo, who was then sitting, but without injuring him. After that, however, appellant thrust the barrel of the gun against the abdomen of Lorenzo. Then there was an explosion. Lorenzo was shot in the thigh. At least three more shots were fired, hitting Lorenzo in the chest. According to WITNESSES, Sison and Yarte, appellant shot Lorenzo deliberately. Lorenzo died instantly. n his defense, appellant RODOLFO CONCEPCION claimed that the shooting was only accidental. According to him, he was investigating Lorenzo for the latter's disorderly behavior at the town plaza when it happened. He said Lorenzo appeared drunk and unruly, and even verbally challenged him to fight. At this juncture, according to appellant, he fired two shots in the air, but Lorenzo grabbed the barrel of his gun. The gun accidentally fired and Lorenzo was hit. On November 10, 1998, the trial court rendered its decision finding appellant guilty of the crime of murder AND SENTENCED THE ACCUSEDOF RECLUSSION PERPETUA.

ISSUE: WON THE TRIAL COURT ERRED IN DISREGARDING THEACCUSED-APPELLANT DEFENSE OF HAVING ACTED UNDER ANACCIDENT.

HELD: Well settled is the rule in criminal cases, that the prosecution has the burden of proof to establish the guilt of the accused. However, once the defendant admits the commission of the offense charged, but raises an exempting circumstance as a defense, the burden of proof is shifted to him. By invoking mere accident as a defense, appellant now has the burden of proving that he is entitled tothat exempting circumstance under Article 12 (4) of the Code. The existence of accident must be proved by the appellant to the satisfaction of the court. For this to be properly appreciated in appellant's favor, the following requisites must concur: (1) that the accused was performing a lawful act with due care; (2) that the injury is caused by mere accident; and (3) that there was no fault or intent on his part to cause the injury. Appellant must convincingly prove the presence of these elements in order to benefit from the exempting circumstance of accident. However, his defense utterly failed to discharge this burden. Thus, we find no reversible error in the judgment of the trial court. Hence, the decision of the Regional Trial Court, Tarlac, Branch 65, in Criminal Case No. 9776, convicting appellant Rodolfo Concepcion of the crime of murder, is hereby AFFIRMED with MODIFICATION. Appellant is found guilty of the crime of homicide

MANABAN versus COURT OF APPEALS
(G.R. No. 150723)

Facts: On October 11, 1996, at around 1:25 o'clock in the morning, Joselito Bautista, a father and a member of the UP Police Force, took his daughter, Frinzi, who complained of difficulty in breathing, to the UP Health Center. There, the doctors prescribed certain medicines to be purchased. Needing money therefore, Joselito Bautista, who had taken alcoholic drinks earlier, proceeded to the BPI Kalayaan Branch to withdraw some money from its Automated Teller Machine (ATM). Upon arrival at the bank, Bautista proceeded to the ATM booth but because he could not effectively withdraw money, he started kicking and pounding on the machine. For said reason, the bank security guard, RamonitoManaban, approached and asked him what the problem was. Bautista complained that his ATM was retrieved by the machine and that no money came out of it. After Manaban had checked the receipt, he informed Bautista that the Personal Identification Number (PIN) entered was wrong and advised him to just return the next morning. This angered Bautista all the more and resumed pounding on the machine. Manaban then urged him to calm down and referred him to their customer service over the phone. Still not mollified, Bautista continued raging and striking the machine. When Manaban could no longer pacify him, he fired a warning shot. That diverted the attention of Bautista. Instead of venting his ire against the machine, he confronted Manaban. After some exchange of words, a shot rang out fatally hitting Bautista. On 24 October 1996, Manaban was charged with the crime of murder. The accused interposed the defense of self-defense, alleging that he shot the victim because of his apprehension that the latter would draw his revolver and shot him, having that fear, he shot the victim after giving him warning which caused the victim's demise.

Issue: Whether or not Manaban may interpose self-defense to justify his act in killing the deceased?

Ruling: No. In this case, the Supreme Court credited some mitigating circumstances in favor of the accused but as regard to self-defense the Court finds it to be untenable. *Unlawful Aggression is an Indispensable Requisite of Self-Defense*. When the accused invokes self-defense, he in effect admits killing the victim and the burden is shifted to him to prove that he killed the victim to save his life. The accused must establish by clear and convincing evidence that all the requisites of self-defense are present. Under paragraph 1, Article 11 of the Revised Penal Code, the three requisites to prove self-defense as a justifying circumstance which may exempt an accused from criminal liability are*: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the accused or the person defending himself. Unlawful aggression is an indispensable requisite of self-defense.* Self-defense is founded on the necessity on the part of the person being attacked to prevent or repel the unlawful aggression. Thus, without prior unlawful and unprovoked attack by the victim, there can be no complete or incomplete self-defense. *Unlawful aggression* is an actual physical assault or at least a threat to attack or inflict physical injury upon a person. A mere threatening or intimidating attitude is not considered unlawful aggression, unless the threat is offensive and menacing, manifestly showing the wrongful intent to cause injury. There must be an actual, sudden, unexpected attack or imminent danger thereof, which puts the defendant's life in real peril. In this case, there was no unlawful aggression on the part of the victim.First, Bautista was shot at the back as evidenced by the point of entry of the bullet. Second, when Bautista was shot, his gun was still inside a locked holster and tucked in his right waist. Third, when Bautista turned his back at Manaban, Manaban was already pointing his service firearm at Bautista. These circumstances clearly belie Manaban's claim of unlawful aggression on Bautista's part. There being no unlawful aggression in the instant case, Manaban cannot invoke the justifying circumstance of self-defense.

PEOPLE OF THE PHILIPPINES *vs.* BONNIE R. RABANAL
G.R. No. 146687. August 22, 2002;

FACTS: At 2:00 a.m. of August 11, 1996, Freddie Soriano, a security guard of the CSI building in Dagupan City, saw accused-appellant Bonnie Rabanal, a security guard of the McDonald's restaurant located in the same building, repeatedly shoot at close range the victim Rudy Pascua, the security coordinator of the building. After the victim fell down, accused-appellant fired another shot and then took the victim's gun and fled.– The victim was rushed to hospital where he was declared dead on arrival.

Accused-appellant asserts that the fatal shooting of Rudy Pascua was an act of self-defense. He alleges that on August 11, 1996, at 2:00 a.m., Pascua, who was armed and reeking of alcohol, approached him at his usual post in front of the McDonald's restaurant and suddenly kicked the podium, causing it to fall on him. When accused-appellant asked what was the matter, Pascua uttered, "You're hard-headed security guards, I told you to give me P100.00 per head monthly but you refused to give, are you going to give me or not?" He then drew his firearm and said, "If that's the thing you want to happen, I better kill you."[5]

Accused-appellant pleaded for his life while Pascua demanded that he surrender his firearm. While Pascua was reaching for accused-appellant's holster, the latter pushed him and grabbed his gun. Pascua lost his balance and staggered backwards. At that instant, accused-appellant drew his pistol and pulled the trigger four times. Pascua fell to the ground. Accused-appellant then took the gun from Pascua's hand and brought it to the security agency as proof that somebody attempted to kill him.[6]

That same day, accused-appellant voluntarily surrendered himself and Pascua's firearm to Supt. Enrique Galang at Camp Crame. He did not surrender at Dagupan because of Pascua's influence as bodyguard of Belen Fernandez. He was brought to the Lingayen Police Station the following day.[7]

On October 24, 2000, the trial court rendered judgment convicting accused-appellant and imposing on him the supreme penalty of death.

ISSUE:

1. Whether or not the trial court gravely erred in holding that all elements of self-defense were not obtaining
2. When does unlawful aggression cease

RULING: For **self-defense** to prosper, accused-appellant must prove by clear and convincing evidence the following elements: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself.[10] Although all the three elements must concur, self-defense must rest firstly on proof of unlawful aggression on the part of the victim. If no unlawful aggression has been proved, no self-defense may be successfully pleaded, whether complete or incomplete.[11] In other words in self-defense, unlawful aggression is a primordial element. It presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person – not a mere threatening or intimidating attitude – at the time the defensive action was taken against the aggressor.[12]

In the case at bar, even if we sustain the version of accused-appellant that the initial act of aggression came from the deceased, we cannot uphold his plea of self-defense. While indeed, the drunken victim initially brandished his handgun and aimed it at accused-appellant, the evidence shows that he laid it down on the nearby concrete porch shortly before he was shot several times by accused-appellant.[13]

When the deceased laid down his gun, unlawful aggression had already ceased and it was no longer necessary for accused-appellant to have fired successively the way he did at the victim.[14] Furthermore, we note that accused-appellant had shoved the intoxicated victim who staggered backwards. Hence, it was accused-appellant who became the aggressor when he, despite such prevailing conditions, not to mention the inebriated physical state of the deceased, proceeded to fire several shots at the victim. His act can no longer be interpreted as an act of self-preservation but a perverse desire to kill.[15]

Accused-appellant, however, insists that the unlawful aggression of the victim was a "continuing one whether or not he momentarily tripped, lost his balance or did similar acts of

temporary character." Thus, he argues that even if the deceased lowered his guard at some point, he was still the aggressor. He also cites the fact that the victim was "predisposed to using violence and intimidation while accused-appellant was simply a security guard doing his job;" and that the victim was armed with the more powerful and sophisticated .9mm Colt MK IV series 80, while accused-appellant merely had an inferior .38 caliber pistol.[17]

These arguments fail to persuade.

There is unlawful aggression when the peril to one's life, limb or right is either actual or imminent. Actual peril to one's life means that the danger must be present, that is, actually in existence, or imminent in that the danger is on the point of happening.[18] This cannot be said in this case because the victim was unarmed when he was shot by accused-appellant.[19] Indeed, the danger had already ceased when the victim laid his gun down on the pavement, thus enabling accused-appellant to push him away.

All told, the Court finds no reason to reverse the ruling of the court *a quo* insofar as accused-appellant's culpability is concerned.

PEOPLE OF THE PHILIPPINES, appellee,
vs.
TIMOTEO ESCARLOS, alias "Tomy," appellant
G.R. No. 148912 September 10, 2003

FACTS: On the night of July 1, 2000, accused TIMOTEO ESCARLOS attended a benefit dance in Purok Inanama, Domanpot Asingan, Pangasinan.

While thereat, Kgd. Antonio Balisacan who was then drunk, passed in front of accused and told him, 'You are here again to create trouble.' Accused was offended so he answered back saying 'Why do you say that to me when I am not doing any trouble here.' Antonio Balisacan told him, 'OKINNAM KETDI' (vulva of your Mother) and without warning boxed him. Timoteo was hit on the forehead, which left a scar on his forehead about an inch above the right eyebrow. He intended to box back but he noticed that the victim was pulling out a kitchen knife, so for fear of his life, he grabbed the weapon from Antonio Balisacan and used the knife in stabbing the latter who was hit at the side below the left armpit. He stabbed him twice and when the victim was about to fall down, he was able to hit him for the third time.

The weapon that Timoteo was able to get from Antonio was a kitchen knife about 10 to 12 inches. Antonio drew the knife from his left side. Timoteo was able to get hold of the handle of the knife when he grappled for the same from the victim, by taking hold of the knife with his right hand and stabbed Antonio who was intending to stab him. Antonio was one (1) inch taller than accused.

Timoteo's testimony was corroborated by an eyewitness, CESARIO ESCARLOS, the brother of Timoteo.

The trial court believed that the prosecution's evidence was sufficient to convict appellant of murder qualified by treachery and rejected the appellant's plea of self-defense.

ISSUES: Whether or not the justifying circumstance of self-defense is available to the appellant.

RULING: No. In pleading self-defense, appellant asserts that it was the victim who initially approached and assaulted him. Allegedly, the former had no choice but to defend himself under the circumstances.

When the accused invokes self-defense, the burden of proof is shifted from the prosecution to the defense. Thus, the latter assumes the responsibility of establishing this plea by clear and convincing evidence. Upon its shoulders rests the duty of proving, to the satisfaction of the trial court, the justifying circumstance of self-defense.

The accused who avers that the killing arose from an impulse of self-defense has the onus probandi of proving the elements thereof. The essential requisites of self-defense are the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. Verily, to invoke self-defense successfully, there must have been an unlawful and unprovoked attack that endangered the life of the accused, who was then forced to inflict severe wounds upon the assailant by employing reasonable means to resist the attack.

While the victim may be said to have initiated the confrontation, The Court do not subscribe to the view that the former was subjected to an unlawful aggression within the legal meaning of the phrase.

The alleged assault did not come as a surprise, as it was preceded by a heated exchange of words between the two parties who had a history of animosity. Moreover, the alleged drawing of a knife by the victim could not have placed the life of appellant in imminent danger. The former might have done it only to threaten or intimidate the latter.

Unlawful aggression presupposes actual, sudden, unexpected or imminent danger -- not merely threatening and intimidating action. Uncertain, premature and speculative was the assertion of appellant that the victim was about to stab him, when the latter had merely drawn out his knife. There is aggression, only when the one attacked faces real and immediate threat to one's life. The peril sought to be avoided must be imminent and actual, not just speculative.

Even assuming arguendo that there was an altercation before the stabbing incident and that some danger did in fact exist, the imminence of that danger had already ceased the moment appellant disarmed the victim by wresting the knife from the latter. After the former had successfully seized it, there was no longer any unlawful aggression to speak of that would have necessitated the need to kill the latter. Hence, appellant became the unlawful aggressor when he stabbed the victim.

When an unlawful aggression that has begun no longer exists, the one who resorts to self-defense has no right to kill or even to wound the former aggressor. To be sure, when the present victim no longer persisted in his purpose or action to the extent that the object of his attack was no longer in peril, there was no more unlawful aggression that would warrant legal self-defense on the part of appellant. Undoubtedly, the latter went beyond the call of self-preservation when he proceeded to inflict excessive, atrocious and

fatal injuries on the latter, even when the allegedly unlawful aggression had already ceased.

As correctly held by the trial court, the nature, the number and the location of the wounds inflicted upon the victim were important indicia disproving self-defense. The claim of appellant that only two of the four stab wounds were fatal is of no moment, inasmuch as the means he employed was glaringly disproportionate to the perceived unlawful aggression. He admitted in his testimony that he had stabbed the victim for the third time, even when the latter was about to fall.

The means employed by a person invoking self-defense must be reasonably commensurate to the nature and the extent of the attack sought to be averted.

Indeed, the means employed by a person resorting to self-defense must be rationally necessary to prevent or repel an unlawful aggression.

Unlawful aggression is a conditio sine qua non for upholding the justifying circumstance of self-defense. Unless the victim has committed unlawful aggression against the other, there can be no self-defense, complete or incomplete, on the part of the latter. If there is nothing to prevent or repel, the other two requisites of self-defense will have no basis.

PEOPLE OF THE PHILIPPINES *vs*. DOMINGO ARNANTE
G. R. No. 148724. October 15, 2002]

Facts: On July 16, 2000 the family were celebrating the birth anniversary of Christopher Arnante, the son of the victim Velentine Arnante and brother of the accused Domingo Arnante. At around 6 o clock in the evening, Valentine and his son Domingo, by then already both drunk, came to a heated argument. Domingo told his father to stop embarrassing him in front of guess but the latter continued on scolding him. Domingo entered his room to put to stop his scolding. He took a gun and then fired down in order for his father Valentine to stop scolding him. Domingo went out of the house through the kitchen door. His father Valentine followed until he was fired and shot twice by Domingo. The victim was not able to make it to the hospital.

Domingo Arnante was indicted for parricide in an information.

During the trial, the accused admitted having shot his own father twice but sought to justify his deed. He claimed that he acted in legitimate self-defense.

Issue: WON the claim for self-defense is tenable.

Held: The claim of self-defense is untenable. When an accused admits killing the victim but invokes self-defense to escape criminal liability, he assumes the burden to establish his plea by credible, clear and convincing evidence. In order that the plea of self-defense can prevail, three basic conditions must concur, i.e., (1) unlawful aggression on the part of the victim, (2) reasonable necessity of the means employed to prevent or repel it, and (3) lack of sufficient provocation on the part of the person defending himself. Unlawful aggression presupposes an actual, sudden and unexpected attack or imminent danger on the life and limb of a person defending himself and not merely a threatening or intimidating attitude. The aggression must be real and not just imaginary.

In the Domingo's testimony, he said that his father threatened to hack him. Mere Threatening attitude is not unlawful aggression. Nothing in the testimony would suggest the attendance of a kind of unlawful aggression on the part of the victim that can justify appellants claim of self-defense. A mere perception of an impending attack is not sufficient to constitute unlawful aggression, and neither is an intimidating or threatening attitude.

The appellant voluntarily surrendered himself to the authorities shortly after the shooting incident. Article 246 of the Revised Penal Code, as amended by Republic Act No. 7659, prescribes the penalty of *reclusion perpetua* to death for the crime of parricide. The attendance of the mitigating circumstance of voluntary surrender justifies the imposition of the lesser penalty.

The Court find DOMINGO ARNANTE y DACPANO guilty of the crime of parricide and sentencing him to suffer the penalty of *reclusion perpetua,* as well as to pay P50,000.00 civil indemnity, is AFFIRMED with modification in that appellant is likewise hereby ordered to pay P50,000.00 moral damages and P25,000.00 exemplary damages to the heirs of the victim.

Mitigating Circumstance: Incomplete Self-defense

People v. CA and Tangan
(G.R. No. 103613)

Facts: On December 1, 1984, Navy Captain Eladio C. Tangan was driving aloneonRoxasBoulevard heading south and Generoso Miranda was driving his car in the same direction with his uncle, Manuel Miranda. Generoso was moving ahead of Tangan. Suddenly, firecrackers were thrown in Generoso's way, causing him to swerve to the right and cut Tangan's path. Tangan blew his horn several times. Generoso, slowed down to let Tangan pass. Tangan accelerated and overtook Generoso, but when he got in front, Tangan reduced speed. Generoso tried four or five times to overtake on the right lane but Tangan kept blocking his lane. When Tangan slowed down to make a U-turn, Generoso passed him, pulled over and got out of the car with his uncle. Tangan also stopped his car and got out. Generoso and Tangan then exchanged expletives. Then Tangan went to his car and got his .38 caliber handgun on the front seat. According to the prosecution witnesses, Mary Ann Borromeo, Rosalia Cruz and Manuel Miranda, the accused pointed his gun at Generoso Miranda and when Manuel Miranda tried to intervene, the accused pointed his gun at Manuel Miranda, and after that the accused pointed again the gun to Generoso Miranda, the accused shot Generoso Miranda at a distance of about a meter. The shot hit the stomach of Generoso Miranda causing the latter to fall. Manuel Miranda grappled for the possession of the gun and during their grappling,Rosalia Cruz intervened and took hold of the gun and after Rosalia Cruz has taken hold of the gun, a man wearing a red T-shirt took the gun from her. The man in T-shirt was chased by Manuel Miranda who was able to get the gun where the man in red T-shirt placed it. On the other hand, the defense, particularly the accused and his witness by the name of Nelson Pante claimed that after the gun was taken by the accused from inside his car, the Mirandas started to grapple for possession of the gun and during the grappling, and while the two Mirandas were trying to wrest away the gun from the accused, they fell down at the back of the car of the

accused. The accused lost the possession of the gun after falling at the back of his car and as soon as they hit the ground, the gun fell, and it exploded hitting Generoso Miranda. Tangan ran away while Generoso lay on the ground bloodied. Manuel looked for the gun and ran after Tangan. Tangan found a policeman who allowed him to enter his patrol car. Manuel arrived and told the policeman that Tangan had just shot his nephew. Manuel went back to where Generoso lay and there found two ladies, Mary Ann Borromeo and Rosalina Cruz, helping his nephew board a taxi. Manuel suggested that Generoso be brought to the hospital in his car. He was rushed to the Philippine General Hospital but he expired on the way. Tangan was charged with the crime of murder with the use of an unlicensed firearm. However, the information was amended to homicide with the use of alicensed firearm, and he was separately charged with illegal possession of unlicensed firearm. Tangan entered a plea of not guilty in the homicide case, but moved to quash the information for illegal possession of unlicensed firearm on various grounds. The motion to quash was denied, whereupon he filed a petition for certiorari with this Court. On November 5, 1987, said petition was dismissed and the joint trial of the two cases was ordered. After trial, the lower court acquitted Tangan of illegal possession of firearm, but convicted him of homicide. The privileged mitigating circumstance of incomplete self-defense and the ordinary mitigating circumstances of sufficient provocation on the part of the offended party and of passion and obfuscation were appreciated in his favor; Tangan was released from detention after the promulgation of judgment and was allowed bail in the homicide case. Tangan appealed to the Court of Appeals, which affirmed the judgment of the trial court but increased the award of civil indemnity to P50,000.00. His subsequent motion for reconsideration and a motion to cite the Solicitor Generalin contempt were denied by the Court of Appeals. The Solicitor General, on behalf of the prosecution, alleging grave abuse of discretion, filed a petition for certiorari under Rule 65, naming as respondents the Court of Appeals and Tangan, where it prayed that the appellate court's judgment be modified by convicting accused-appellant of homicide without appreciating in his favor any mitigating circumstance.

Issue: Whether or not Tangan acted in incomplete self-defense?

Ruling: Incomplete self-defense is not considered as a justifying act, but merely a mitigating circumstance; hence, the burden of proving the crime charged in the information is not shifted to the accused. In order that it may be successfully appreciated, however, it is necessary that a majority of the requirements of self-defense be present, particularly the requisite of unlawful aggression on the part of the victim. Unlawful aggression by itself or in combination with either of the other two requisite suffices to establish incomplete self-defense. Absent the unlawful aggression, there can never be self-defense, complete or incomplete, because if there is nothing to prevent or repel, the other two requisites of defense will have no basis. The element of unlawful aggression in self-defense must not come from the person defending himself but from the victim. A mere threatening or intimidating attitude is not sufficient. The exchange of insulting words and invectives between Tangan and Generoso Miranda, no matter how objectionable, could not be considered as unlawful aggression, except when coupled with physical assault. There being no lawful aggression on the part of either antagonists, the claim of incomplete self-defense falls.

The third requisite of lack of sufficient provocation on the part of the person defending himself is not supported by evidence. By repeatedly blocking the path of the Mirandas for almost five times, Tangan was in effect the one who provoked the former. The repeated blowing of horns, assuming it was done by Generoso, may be irritating to an impatient driver but it certainly could not be considered as creating so powerful an inducement as to incite provocation for the other party to act violently.

The appreciation of the ordinary mitigating circumstances of sufficient provocation and passion and obfuscation under Article 13, paragraphs 4 and 6, have no factual basis. Sufficient provocation as a requisite of incomplete self-defense is different from sufficient provocation as a mitigating circumstance. As an element of self-defense, it pertains to its absence on the part of the person defending himself; while as a mitigating circumstance, it pertains to its presence on the part of the offended party. Besides, only one mitigating circumstance can arise out of one and the same act. Assuming for the sake of argument that the blowing of horns, cutting of lanes or overtaking can be considered as acts of provocation, the same were not sufficient. The word "sufficient" means adequate to excite a person to commit a wrong and must accordingly be proportionate to its gravity.Moreover, Generoso's act of asking for an explanation from Tangan was not sufficient provocation for him to claim that he was provoked to kill or injure Generoso.

For the mitigating circumstance of passion and obfuscation to be appreciated, it is required that (1) there be an act, both *unlawful* and *sufficientto produce* such a condition of mind; and (2) said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.

In the case at bar, Tangan could not have possibly acted upon an impulse for there was no sudden and unexpected occurrence which wuld have created such condition in his mind to shoot the victim. Assuming that his path was suddenly blocked by Generoso Miranda due to the firecrackers, it can no longer be treated as a startling occurrence, precisely because he had already passed them and was already the one blocking their path. Tangan's acts were done in the spirit of revenge and lawlessness, for which no mitigating circumstance of passion or obfuscation can arise.

Pp vs. Rubiso
GR 128871, Mar. 18, 2003

FACTS:

- Jimmy Rubiso was charged with murder of Serafin Hubines.
- Rubiso claims that it was self-defense.

ISSUE: Whether or not Rubiso's contention of self-defense is proper.

HELD: In invoking self-defense, appellant is deemed to have admitted having killed the victim and the burden of evidence is shifted on him to establish convincing evidence that excludes any vestige of criminal aggression on his part.

To successfully claim self-defense, the accused must prove the existence of the following: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed by the person being attacked to prevent or repel it; and (3) lack of sufficient provocation on the part of the person defending himself. Unlawful aggression is a condition *sine qua non* for the justifying circumstance of self-defense. It contemplates an actual, sudden and unexpected

attack, or imminent danger thereof, and not merely a threatening or intimidating attitude. The person defending himself must have been attacked with actual physical force or with actual use of weapon. Of all the elements, unlawful aggression, i.e., the sudden unprovoked attack on the person defending himself is indispensable.

Assuming that Hubines had a gun and pulled it, however, records show that he did not manifest any aggressive act which may have imperiled the life and limb of herein appellant. It is axiomatic that the mere thrusting of one's hand into his pocket as if for the purpose of drawing a weapon is not unlawful aggression. Even the cocking of a rifle without aiming the firearm at any particular target is not sufficient to conclude that one's life was in imminent danger. Hence, a threat, even if made with a weapon, or the belief that a person was about to be attacked, is not sufficient. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression.

Another factor which militates against appellant's claim of self-defense is the nature and number of wounds suffered by the victim.

The location and presence of gunshot wounds on the body of the victim eloquently refute appellant's allegation of self-defense. It is an oft repeated rule that the presence of a large number of wounds, their location and their seriousness would negate self-defense. Instead, they indicate a determined effort to kill.

We thus agree with the trial court that appellant, in killing the victim, did not act in self-defense.

Justifying Circumstances: Self-defense

Sanchez vs. People
(G.R. No. 161007)

Facts: Sanchez's account of the facts shows that he and Jamero were tenants of adjacent lots located in San Jose, Mahayag, Zamboanga del Sur. At about 7:00o'clock in the morning of September 4, 1993, Sanchez saw Jamero destroying the dike which served as the boundary between the two lots. Sanchez confronted Jamero and told the latter that he was encroaching on his land. Jamero struck him with a shovel. The shovel got stuck in the mud so Jamero resorted to throwing mud at Sanchez. Fighting back, Sanchez hacked Jamero with a bolo, resulting in the latter's death. Sanchez then proceeded to the municipal building to surrender upon the advice of his son-in-law. According to the OSG, Jamero's attack on Sanchez was unsuccessful because the latter was able to evade it and Jamero's shovel got stuck in the mud. Jamero fled toward the rice field when Sanchez unsheathed his bolo. Sanchez pursued him and struck his head with a bolo. Jamero fell down but was able to stand up again. He ran away but after a short distance, fell down again. Sanchez approached him and stabbed him several times. Not satisfied, Sanchez pushed Jamero's face down into the knee-deep mud. After Jamero's aggression ceased when he fled and left his shovel stuck in the mud, there was no longer any justification for Sanchez to go after him and hack him to death.

Issue: Whether or not unlawful aggression, if not continuous, does not constitute aggression warranting self-defense?

RULING: There can be no self-defense, complete or incomplete, unless the accused proves the first essential requisite²unlawful aggression on the part of the victim. Unlawful aggression presupposes an actual, sudden and unexpected or imminent danger on the life and limb of a person a mere threatening or intimidating attitude is not sufficient. There must be actual physical force or athreat to inflict physical injury. In case of a threat, it must be offensive and positively strong so as to display a real, not imagined, intent to cause injury. Aggression, if not continuous, does not constitute aggression warranting self-defense.

In this case, the twin circumstances of Jamero's shovel getting stuck in the mud and his running away from Sanchez convincingly indicate that there was nolonger any danger to the latter's life and limb which could have justified his pursuit of Jamero and subsequent hacking and killing of the latter.

Sanchez's failure to prove unlawful aggression by Jamero and the prosecution's evidence conclusively showing that it was Sanchez who was the unlawful aggressor completely discounts Sanchez's claim of self-defense. Even incomplete self-defense by its very nature and essence would always require the attendance of unlawful aggression initiated by the victim which must clearly be shown.

People vs. Genosa
G.R. No. 135981
January 15, 2004

Facts: This case stemmed from the killing of Ben Genosa, by his wife Marivic Genosa, appellant herein. During their first year of marriage, Marivic and Ben lived happily but apparently thereafter, Ben changed and the couple would always quarrel and sometimes their quarrels became violent. Appellant testified that every time her husband came home drunk, he would provoke her and sometimes beat her. Whenever beaten by her husband, she consulted medical doctors who testified during the trial. On the night of the killing, appellant and the victim were quarreled and the victim beat the appellant. However, appellant was able to run to another room. Appellant admitted having killed the victim with the use of a gun. The information for parricide against appellant, however, alleged that the cause of death of the victim was by beating through the use of a lead pipe. Appellant invoked self defense and defense of her unborn child.

On automatic review before the Supreme Court, appellant filed an URGENT OMNIBUS MOTION praying that the Honorable Court allow (1) the exhumation of Ben Genosa and the re-examination of the cause of his death; (2) the examination of Marivic Genosa by qualified psychologists and psychiatrists to determine her state of mind at the time she killed her husband; and finally, (3) the inclusion of the said experts' reports in the records of the case for purposes of the automatic review or, in the alternative, a partial re-opening of the case a quo to take the testimony of said psychologists and psychiatrists. The Supreme Court partly granted the URGENT OMNIBUS MOTION of the appellant. It remanded the case to the trial court for reception of expert psychological and/or psychiatric opinion on the "battered woman syndrome" plea. Testimonies of two expert witnesses on the "battered woman syndrome," Dra. Dayan and Dr. Pajarillo, were presented and admitted by the trial court and subsequently submitted to the Supreme Court as part of the records.

Issue: Whether or not appellant herein can validly invoke the "battered woman syndrome" as constituting self-defense.
Held: No. A battered woman has been defined as a woman "who is repeatedly subjected to any forceful physical or psychological

behavior by a man in order to coerce her to do something he wants her to do without concern for her rights. Battered women include wives or women in any form of intimate relationship with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman."

More graphically, the battered woman syndrome is characterized by the so-called "cycle of violence," which has three phases: (1) the tension-building phase; (2) the acute battering incident; and (3) the tranquil, loving (or, at least, nonviolent) phase.

In any event, the existence of the syndrome in a relationship does not in itself establish the legal right of the woman to kill her abusive partner. Evidence must still be considered in the context of self-defense. Settled in our jurisprudence, is the rule that the one who resorts to self-defense must face a real threat on one's life; and the peril sought to be avoided must be imminent and actual, not merely imaginary. Thus, the Revised Penal Code provides that the following requisites of self-defense must concur: (1) Unlawful aggression; (2) Reasonable necessity of the means employed to prevent or repel it; and (3) Lack of sufficient provocation on the part of the person defending himself.

Unlawful aggression is the most essential element of self-defense. It presupposes actual, sudden and unexpected attack -- or an imminent danger thereof -- on the life or safety of a person. In the present case, however, according to the testimony of Marivic herself, there was a sufficient time interval between the unlawful aggression of Ben and her fatal attack upon him. She had already been able to withdraw from his violent behavior and escape to their children's bedroom. During that time, he apparently ceased his attack and went to bed. The reality or even the imminence of the danger he posed had ended altogether. He was no longer in a position that presented an actual threat on her life or safety.

Had Ben still been awaiting Marivic when she came out of their children's bedroom -- and based on past violent incidents, there was a great probability that he would still have pursued her and inflicted graver harm -- then, the imminence of the real threat upon her life would not have ceased yet. Where the brutalized person is already suffering from Battered Woman Syndrome, further evidence of actual physical assault at the time of the killing is not required. Incidents of domestic battery usually have a predictable pattern. To require the battered person to await an obvious, deadly attack before she can defend her life "would amount to sentencing her to 'murder by installment.'" Still, impending danger (based on the conduct of the victim in previous battering episodes) prior to the defendant's use of deadly force must be shown. Threatening behavior or communication can satisfy the required imminence of danger. Considering such circumstances and the existence of Battered Woman Syndrome, self-defense may be appreciated.

The Court reiterate the principle that aggression, if not continuous, does not warrant self-defense. In the absence of such aggression, there can be no self-defense -- complete or incomplete -- on the part of the victim. **Thus, Marivic's killing of Ben was not completely justified under the circumstances.**

Ty vs People
G.R. No. 149275. September 27, 2004

Facts: This case stemmed from the filing of 7 Informations for violation of B.P. 22 against Ty before the RTC of Manila. The said accused drew and issue to Manila Doctors' Hospital to apply on account or for value to Editha L.Vecino several post-dated checks. The said accused well knowing that at the time of issue she did not have sufficient funds in or credit with the drawee bank for payment of such checks in full upon its presentment, which check when presented for payment within ninety (90) days from the date hereof, was subsequently dishonored by the drawee bank for "Account Closed" and despite receipt of notice of such dishonor, said accused failed to pay said Manila Doctors Hospital the amount of the checks or to make arrangement for full payment of the same within five (5)banking days after receiving said notice. Ty claimed that she issued the checks because of "an uncontrollable fear of a greater injury." She claims that she was forced to issue the checks to obtain release of her mother whom the hospital inhumanely and harshly treated, and would not discharge unless the hospital bills are paid. The trial court rendered judgment against Ty. Ty interposed an appeal with the CA and reiterated her defense that she issued the checks "under the impulse of an uncontrollable fear of a greater injury or in avoidance of a greater evil or injury." The appellate court affirmed the judgment of the trial court with modification. It set aside the penalty of imprisonment and instead sentenced Ty to pay a fine of sixty thousand pesos P 60,000.00 equivalent to double the amount of the check, in each case.

Issue: Whether or not the defense of uncontrollable fear is tenable to warrant her exemption from criminal liability?

Held: No!

Uncontrollable fear

- For this exempting circumstance to be invoke successfully, the following requisites must concur:
(1) existence of anuncontrollable fear;
(2) the fear must be real and imminent; and
(3) the fear of an injury is greater than or at least equal to that committed. In the instant case, the evil sought to be avoided is merely expected or anticipated.

If the evil sought to be avoided is merely expected or anticipated or may happen in the future, this defense is not applicable. It must appear that the threat that caused the uncontrollable fear is of such gravity and imminence that the ordinary man would have succumbed to it. It should be based on a real, imminent or reasonable fear for one's life or limb. A mere threat of a futureinjury is not enough . It should not bespeculative, fanciful, or remote. A person invoking uncontrollable fear must show therefore that the compulsion was such that it reduced him to a mere instrument acting not only without will but against his will as well. It must be of such character as to leave no opportunity to the accused for escape.

Speculative fear
The fear harbored by Ty was not real and imminent. Ty claims that she was compelled to issue the checks, a condition the hospital allegedly demanded of her before her mother could be discharged,

for fear that her mother's health might deteriorate further due to the inhumane treatment of
the hospital or worse, her mother might commit suicide. This isspecul ative fear; it is not the uncontrollable fear contemplated by law

G.R. No. 149152 February 2, 2007
RUFINO S. MAMANGUN vs. PEOPLE OF THE PHILIPPINES
(Fulfillment of a Lawful Duty)

FACTS: The accused-petitioner police officer Mamangun was charged before the Sandiganbayan with the crime of Murder. On or about the 31st day of July 1992, held at Meycauyan, Bulacan, a hold-up- robbery was reported in the area and that the suspect went to the rooftop of the house. The accused Mamangun, together with two other police officers responded in the area. It is undisputed fact that the three policemen, i.e., petitioner, Diaz and Cruz, each armed with a drawn handgun, searched the rooftop. There, they saw a man whom they thought was the robbery suspect. At that instance, petitioner Mamangun, who was walking ahead of the group, fired his handgun once, hitting the man. The man turned out to be Gener Contreras (Contreras) who was not the robbery suspect. Contreras died of the gunshot wound.

The prosecution lone eyewitness said that accused Mamangun fired his gun although Gener identified himself while uttering the words to Mamangun's group with "Hindi ako, hindiako" to which Mamangun replied, " Anonghindiako?"

The defense denied the presence of the witness of the prosecution and corroborated the testimonies of the three police officers. They said that the rooftop was dark. They saw Contreras crouching on the rooftop and shouted, "PulisTigil!" whereupon the person suddenly stopped, turned around, faced Mamangun, and raised a stainless steel pipe towards the latter's head but Mamangun was able to evade the attack. This prompted Mamangun to shoot the person on the left arm. All three claimed that it was only at this point that PO2 Cruz and Diaz approached Contreras who told them, "Hindi ako. Hindi ako."Mamangun went near Contreras and asked, "Why did you go to the rooftop? You know there are policemen here." Thus, the defense claimed self-defense and lawful performance of a duty as police officer.

After due proceedings, Sandiganbayan came out with its decision finding the accused- petitioner guilty beyond reasonable doubt of only the crime of Homicide. Hence this petition.

ISSUE: Can the petitioner claim the justifying circumstance of lawful performance of a duty?

HELD: No. The justifying circumstance of fulfillment of duty under paragraph 5, Article 11, of the Revised Penal Code may be invoked only after the defense successfully proves that: (1) the accused acted in the performance of a duty; and (2) the injury inflicted or offense committed is the necessary consequence of the due performance or lawful exercise of such duty. Having admitted the fatal shooting of Contreras, petitioner is charged with the burden of adducing convincing evidence to show that the killing was done in the fulfillment of his duty as a policeman.

Self-defense, whether complete or incomplete, cannot be appreciated as a valid justifying circumstance in this case. For, from the above admitted, uncontroverted or established facts, the most important element of unlawful aggression on the part of the victim to justify a claim of self-defense was absent. Lacking this essential and primary element of unlawful aggression, petitioner's plea of self-defense, complete or incomplete, must have to fail.

To be sure, acts in the fulfillment of a duty, without more, do not completely justify the petitioner's firing the fatal gunshot at the victim.

G.R. No. 150647 September 29, 2004
ROWENO POMOY vs. PEOPLE OF THE PHILIPPINES
(lawful performance of police duties)

FACTS: Pomoy is a PNP member of the Iloilo Provincial Mobile Force Company then attached to the defunct 321st PC Company. He was one of the investigators of their outfit. Tomas Balboa was a suspect in a robbery case who was apprehended by the police of Concepcion and then turned over to them (PC) and placed in their stockade. At about 2 o'clock or past that time of January 4, 1990 he got Tomas Balboa from their stockade for tactical interrogation; as he was already holding the door knob of their investigation room and about to open and enter it, all of a sudden he saw Tomas Balboa approach him and take hold or grab the handle of his gun, both were then grappling for the said gun when it fired TWICE and Balboa was killed.

The Regional trial court as well as the Court of Appeals convicted Pomoy of the crime of Homicide. Hence this Petition.

ISSUE: Whether the shooting of Tomas Balboa was the result of an accident, and was committed when accused performed lawful police duties.

RULING: Balboa was killed by an accidental firing of the gun w/c resulted in the course of scuffling for the gun.

The elements of accident are as follows: 1) the accused was at the time performing a lawful act with due care; 2) the resulting injury was caused by mere accident; and 3) on the part of the accused, there was no fault or no intent to cause the injury. From the facts, it is clear that all these elements were present. At the time of the incident, petitioner was a member -- specifically, one of the investigators -- of the Philippine National Police (PNP) stationed at the Iloilo Provincial Mobile Force Company. ***Thus, it was in the lawful performance of his duties as investigating officer that, under the instructions of his superior, he fetched the victim from the latter's cell for a routine interrogation.***

Again, it was in the lawful performance of his duty as a law enforcer that petitioner tried to defend his possession of the weapon when the victim suddenly tried to remove it from his holster. As an enforcer of the law, petitioner was duty-bound to prevent the snatching of his service weapon by anyone, especially by a detained person in his custody. Such weapon was likely to be used to facilitate escape and to kill or maim persons in the vicinity, including petitioner himself.

Petitioner cannot be faulted for negligence. He exercised all the necessary precautions to prevent his service weapon from causing accidental harm to others. As he so assiduously maintained, he had kept his service gun locked when he left his house; he kept it inside its holster at all times, especially within the premises of his working area.

CABANLIG vs. SANDIGANBAYAN
(G.R. No. 148431)

Facts: On 24 September 1992 a robbery took place in the Municipality of Penaranda, Nueva Ecija and four days later, the investigating authorities apprehended three suspects and one of them was Valino. The police recovered most of the stolen items. Nevertheless, a flower vase and a small radio were still missing. Cabanlig asked the three suspects where these two items were and subsequently, Valino informed the former that he had moved the vase and radio to another location without the knowledge of his two cohorts. Cabanlig decided to bring along Valino, leaving behind the two other suspects. Around 6:30 p.m. on the same day, five fully armed policemen in uniform – Cabanlig, Padilla, Mercado, Abesamis and Esteban – escorted Valino to Barangay Sinasahan, Nueva Ecija to recover the missing flower vase and radio. The policemen and Valino were aboard a police vehicle, an Isuzu pick-up jeep. Just after the jeep had crossed the Philippine National Railway bridge and while the jeep was slowly negotiating a bumpy and potholed road, Valino suddenly grabbed the M16 Armalite of one of the accompanyinh policemen which was at that time full of ammunitions and jumped out of the jeep. Cabanlig acted immediately. Without issuing any warning of any sort, and with still one foot on the running board, Cabanlig fired one shot at Valino, and after two to three seconds, Cabanlig fired four more successive shots which caused the death of the deceased. The Sandiganbayan convicted Cabanlig for homicide, relying on the ground that Cabanlig could not invoke self-defense.

Issue: Whether or not Cabanlig is justified in killing the victim (Valino)?

Ruling: Yes, Cabanlig is justified in killing Valino not on the ground of self-defense or defense of a stranger but on fulfilment of duty.Self-defense and fulfillment of duty operate on different principles. Self-defense is based on the principle of self-preservation from mortal harm, while fulfillment of duty is premised on the due performance of duty. The difference between the two justifying circumstances is clear, as the requisites of self-defense and fulfillment of duty are different. The elements of self-defense are as follows: *a) Unlawful Aggression; b) Reasonable necessity of the means employed to prevent or repel it; c) Lack of sufficient provocation on the part of the person defending himself.* On the other hand, the requisites of fulfillment of duty are: *1. The accused acted in the performance of a duty or in the lawful exercise of a right or office; 2. The injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office.* A policeman in the performance of duty is justified in using such force as is reasonably necessary to secure and detain the offender, overcome his resistance, prevent his escape, recapture him if he escapes, and protect himself from bodily harm. In case injury or death results from the policeman's exercise of such force, the policeman could be justified in inflicting the injury or causing the death of the offender if the policeman had used necessary force. Since a policeman's duty requires him to overcome the offender, the force exerted by the policeman may therefore differ from that which ordinarily may be offered in self-defense. However, a policeman is never justified in using unnecessary force or in treating the offender with wanton violence, or in resorting to dangerous means when the arrest could be affected otherwise.In this case, Valino was committing an offense in the presence of the policemen when Valino grabbed the M16 Armalite from Mercado and jumped from the jeep to escape. The policemen would have been justified in shooting Valino if the use f force was absolutely necessary to prevent his escape. But Valino was not only an escaping detainee. Valino had also stolen the M16 Armalite of a policeman. The policemen had the duty not only to recapture Valino but also to recover the loose firearm. By grabbing the M16 Armalite, which is a formidable firearm, Valino had placed the lives of the policemen in grave danger. Had Cabanlig failed to shoot Valino immediately, the policemen would have been sitting ducks. Facing imminent danger, the policemen had to act swiftly. The requisites for fulfilment of duty being completely present, Cabanlig is justified for killing Valino, thus, he is acquitted from the felony charged.

PEOPLE OF THE PHILIPPINES *vs.* ENRICO A. VALLEDOR
G.R. No. 129291 July 3, 2002

The Case: This is an appeal from the decision[1] of the Regional Trial Court of Palawan and Puerto Princesa City, Branch 47, in Criminal Case Nos. 9359, 9401, and 9489, convicting accused-appellant of the crimes of murder, attempted murder and frustrated murder, respectively.

FACTS: In Criminal Case No. 9359, for murder:

That on or about the 6th day of March, 1991, in the afternoon, at Barangay Tagumpay, Puerto Princesa City, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with treachery and evident premeditation, with intent to kill and while armed with a knife, did then and there willfully, unlawfully and feloniously assault, attack and stab therewith one Elsa Villon Rodriguez thereby inflicting upon the latter stabbed *(sic)* wound on the chest, which was the immediate cause of her death.

In Criminal Case No.9401, for attempted murder:

That on or about the 6th day of March, 1991, in the afternoon, at Bgy.Tagumpay, Puerto Princesa City, Philippines and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, with treachery and evident premiditation *(sic)* and while armed with a knife, did then and there willfully, unlawfully and feloniously assault, attack and stab therewith one Ricardo Maglalang thereby inflicting upon the latter physical injuries on the different parts of his body, thus commencing the commission of the crime of murder directly by overt acts and does not perform all the acts of execution which would produce the felony by reason of some causes or accident other than his own spontaneous desistance that is, by thetimely and able medical assistance rendered to said Ricardo Maglalang which prevented his death.

In Criminal Case No.9489, for frustrated murder:

That on or about the 6th day of March, 1991 at Bgy.Tagumpay, Puerto Princesa City, Philippines and within the jurisdiction of this Honorable Court the above-named accused, with intent to kill with treachery and evidence *(sic)* premeditation and while armed with a butcher knife, did then and there willfully, unlawfully and feloniously assault, attack and stab therewith on *(sic)* Roger Cabiguen, hitting him on his right forearm, thus performing all the acts of execution which produce the crime of murder as a consequence but which nevertheless did not produce it by reason of causes independent of his will, that is, by the timely and able medical attendance rendered to him which saved his life.

As a defense, accused-appellant invoked the exempting circumstance of insanity.The defense offered in evidence the April 27, 1992 medical findings on accused-appellant by Dr.GuiaMelendres of the National Center for Mental Health, which showed that accused was suffering from Psychosis or Insanity classified under Schizophrenia. This is athought disorder characterized by deterioration from previous level of functioning, auditory hallucination, ideas of reference, delusion of control, suspiciousness, poor judgment and absence of insight.

Hence, on February 28, 1997, the trial court rendered the assailed judgment of conviction. However, his service of sentence was suspended as he was found insane by the trial court. This prompted accused-appellant to interpose this appeal and raised the lone assignment of error that:

ISSUE: THE LOWER COURT ERRED IN CONVICTING THE ACCUSED DESPITE THE FACT THAT WHEN HE ALLEGEDLY COMMITTED THE OFFENSE CHARGED HE WAS MENTALLY ILL, OUT OF HIS MIND OR INSANE AT THE TIME.

RULING: The appeal has no merit.

In the case at bar, accused-appellant failed to discharge the burden of overcoming the presumption of sanity at the time of the commission of the crime. The following circumstances clearly and unmistakably show that accused-appellant was not legally insane when he perpetrated the acts for which he was charged: 1) Simplicio Yayen was positioned nearest to accused-appellant but the latter chose to stab Roger and Elsa; 2) Accused-appellant called out the nickname of Roger before stabbing him; 3) SimplicioYayen and Antonio Magbanua who were likewise inside the room were left unharmed; 4) Accused-appellant, a spurned suitor of Elsa, uttered the words, "*Akoakabales den, Elsa*." (I had my revenge, Elsa) after stabbing her; and 5) Accused-appellant hurriedly left the room after stabbing the victims.

Evidently, the foregoing acts could hardly be said to be performed by one who was in a state of a complete absence of the power to discern. Judging from his acts, accused-appellant was clearly aware and in control of what he was doing as he in fact purposely chose to stab only the two victims**.** Two other people were also inside the room, one of them was nearest to the door where accused-appellant emerged, but the latter went for the victims. His obvious motive of revenge against the victims was accentuated by calling out their names and uttering the words, "I had my revenge" after stabbing them. **Finally, his act of immediately fleeing from the scene after the incident indicates that he was aware of the wrong he has done and the consequence thereof.**

As regards the finding in Criminal Case No. 9489 that accused was guilty of frustrated murder, the Supreme Court modified such ruling and found that accused is only guilty of attempted murder. **The wound sustained by Roger Cabiguen on his right forearm was not fatal. The settled rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only attempted murder, since the accused did not perform all the acts of execution that would have brought about death.**[26]

For the murder of Elsa Rodriguez, in Criminal Case No. 9359, the trial court correctly imposed upon accused-appellant the penalty of*reclusion perpetua*, considering that no aggravating or mitigating circumstance was proven by the prosecution.

WHEREFORE, in view of all the foregoing, the decision of the Regional Trial Court of Palawan and Puerto Princesa City, Branch 47, is MODIFIED as follows:

1. In Criminal Case No. 9359, accused-appellant Enrico A. Valledor is hereby found guilty beyond reasonable doubt of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua*; and to indemnify the heirs of the deceased Elsa Rodriguez the following amounts: P50,000.00 as civil indemnity, P50,000.00 as moral damages and P29,250.00 as actual damages;

2. In Criminal Case No. 9489, accused-appellant is found guilty beyond reasonable doubt only of the crime of attempted murder and is sentenced to an indeterminate penalty of four (4) years and two (2) months of *prisioncorreccional*, as minimum, to eight (8) years of *prision mayor*, as maximum; and to indemnify Roger Cabiguen in the amount of P10,000.00 by way of temperate damages;

3. In Criminal Case No. 9401, accused-appellant is found guilty beyond reasonable doubt of the crime of attempted murder and is sentenced to an indeterminate penalty of four (4) years and two (2) months of *prisioncorreccional*, as minimum, to eight (8) years of *prision mayor*, as maximum.

PP vs. **MELECIO ROBIÑOS**
G.R. No. 138453 - May 29, 2002

FACTS: On March 25, 1995, at around 7:00AM, 15-year old Lorenzo was in his parents' house. While Lorenzo was cooking, he heard his father, **Melecio Robiños** and his mother quarrelling at their sala.

Lorenzo heard his mother told Melecio, 'Why did you come home, why don't you just leave?' After hearing what his mother said, Lorenzo, at a distance of about 5 meters, saw Melecio, with a double-bladed knife, stab his mother on the right shoulder.Upon witnessing Melecio's attack on his mother, Lorenzo immediately left their house and ran to his grandmother's house where he reported the incident.

At around 8:00AM of the same day, Benjamin, the brother of the victim Lorenza Robiños, was at the house of his mother for the purpose of informing his relatives that on the evening of March 24, 1995, Melecio had killed his uncle. However, he received the more distressing news that his own sister Lorenza had been killed too by Melecio.

Upon learning of the attack on his sister, Benjamin did not go to her house because he was afraid of what Melecio might do. From his mother's house, which was about 150 meters away from his sister's home, Benjamin saw Melecio who shouted at him, 'It's good you would see how your sister died.'

Benjamin sought the help of Barangay Captain who called the police station. The police, together with Benjamin and some barangay officials and folk, proceeded to the scene of the crime where they saw blood dripping from the house of appellant and Lorenza.

The police told Melecio to come out of the house. When Melecio failed to come out, the police, with the help of barangay officials, detached the bamboo wall from the part of the house where blood was dripping. They saw Melecio, who was lying on his side and

holding a bloodstained double-bladed knife with his right hand, was embracing his wife. He was uttering the words, 'I will kill myself, I will kill myself.' Lorenza, who was lying on her back and facing upward, was no longer breathing. She appeared to be dead.

The police and the barangay officials went up the stairs of the house and pulled Melecio away from Lorenza's body. Melecio tried to resist. The police, with the help of the barangay officials present, tied his hands and feet with a plastic rope. However, before he was pulled away from the body of his wife and restrained by the police, Melecio admitted to Rolando Valdez, a neighbor and barangay kagawad, that he had killed his wife, showing him the bloodstained knife.

The victim Lorenza Robiños was six (6) months pregnant. That Melecio was under the influence of liquor/drunk who came home and argued/quarreled with his wife, until the suspect got irked, drew a double knife and delivered forty one (41) stab blows. Melecio also stabbed his own body and was brought to the Provincial Hospital.

Melecio seeks exoneration from criminal liability by interposing the defense of insanity. He contends that he was in their house and there was no unusual incident that happened on that date. He did not know that he was charged for the crime of parricide with unintentional abortion. He could not remember when he was informed by his children that he killed his wife. He could not believe that he killed his wife.

Melecio's witnesses testified on the supposed manifestations of his insanity *after* he had already been detained in prison. Dr. Mendoza, a psychiatrist, testified that it was possible that the accused had already been suffering from psychosis at the time of the commission of the crime.

The Issue: Whether or not the court erred in not giving probative weight to the testimony and psychiatric evaluation of Dr. Mendoza, finding Melecio to be suffering from psychosis or insanity thereby exempting the latter from criminal liability.

HELD: ***Insanity as an Exempting Circumstance***

At the outset, it bears noting that Melecio did not present any evidence to contravene the allegation that he killed his wife. Clear and undisputed are the RTC findings on the identity of the culprit and the commission of the complex crime of parricide with unintentional abortion.

Insanity presupposes that the accused was completely deprived of reason or discernment and freedom of will at the time of the commission of the crime. A defendant in a criminal case who relies on the defense of mental incapacity has the burden of establishing the fact of insanity. Only when there is a complete deprivation of intelligence ***at the time of the commission of the crime*** should the exempting circumstance of insanity be considered.

The presumption of law always lies in favor of sanity and, in the absence of proof to the contrary, every person is presumed to be of sound mind. Accordingly, one who pleads the exempting circumstance of insanity has the burden of proving it. Failing this, one will be presumed to be sane when the crime was committed.

A perusal of the records of the case reveals that Melecio's claim of insanity is unsubstantiated and wanting in material proof. There was no substantial evidence that Melecio was completely deprived of reason or discernment when he perpetrated the brutal killing of his wife.

As can be gleaned, a domestic quarrel preceded the fatal stabbing. Thus, it cannot be said that Melecio attacked his wife for no reason at all and without knowledge of the nature of his action. To be sure, his act of stabbing her was a deliberate and conscious reaction to the insulting remarks she had hurled at him as attested to by their son, Lorenzo.

Finally, the fact that Melecio admitted to responding law enforcers how he had just killed his wife may have been a manifestation of repentance and remorse -- a natural sentiment of a husband who had realized the wrongfulness of his act.

To repeat, **insanity must have existed at the time of the commission of the offense**, or the accused must have been deranged even prior thereto. Otherwise he would still be criminally responsible.

Indeed, when insanity is alleged as a ground for exemption from criminal responsibility, the evidence must refer to the **time preceding the act under prosecution or to the very moment of its execution.** *If the evidence points to insanity subsequent to the commission of the crime, the accused cannot be acquitted.*

The testimony of Dr. Mendoza, the psychiatrist who conducted an examination of the mental condition of Melecio, does not provide much help in determining his state of mind at the time of the killing. It must be noted that she examined him only six months after the commission of the crime. Moreover, she was not able to make a background study on the history of his mental condition prior to the killing because of the failure of a certain social worker to gather data on the matter. She likewise admitted that her conclusion was not definite and was merely an opinion.

Jose v. People (G.R. No. 162052)

Facts: Accused was arrested in a drug buy-bust operation conducted by the police. He was a passenger in the car of his cousin Zarraga, whom allegedly made the deal with the undercover in the said operation. They claimed that they were kidnapped by the police and asked ransom for their release from one of the accused's wife. The trial court found them guilty, and credited in their favour the preventive imprisonment they had undergone.CA reduced the penalty on petitioner since he was 13 years old at the time of the commission of the offense.

Issue: W/N petitioner acted with discernment and that prosecution failed to allege in the information that he acted with discernment?

Decision: NO. For a minor at such an age to be criminally liable, the prosecution is burdened to prove beyond reasonable doubt, by direct or circumstantial evidence, that he acted with discernment, meaning that he knew what he was doing and that it was wrong. Such circumstantial evidence may include the utterances of the minor; his overt acts before, during and after the commission of the crime relative thereto; the nature of the weapon used in the commission of the crime; his attempt to silence a witness; his disposal of evidence or

his hiding the corpus delicti. The only evidence of the prosecution against the petitioner is that he was in a car with his cousin, co-accused, when the latter inquired from the poseur-buyer, if he could afford to buy shabu. There is no evidence that the petitioner knew what was inside the plastic and soft white paper before and at the time he handed over the same to his cousin. Indeed, the poseur-buyer did not bother to ask the petitioner his age because he knew that pushers used young boys in their transactions for illegal drugs. Conspiracy is defined as an agreement between two or more persons to commit a crime and decide to commit it. Conspiracy presupposes capacity of the parties to such conspiracy to discern what is right from what is wrong. Since the prosecution failed to prove that the petitioner acted with discernment, it cannot thereby be concluded that he conspired with his co-accused. Accordingly, even if he was, indeed, a co-conspirator, he would still be exempt from criminal liability as the prosecution failed to rebut the presumption of non-discernment on his part by virtue of his age.

Llave v.People
(G.R. No. 166040)

Facts: Marilou asked her 7 yr old daughter to bring home the container with the unsold quail eggs. Debbielyn did as told and went on her way. As she neared the vacant house, she saw Neil Llave, 12 yrs old, who suddenly pulled her behind a pile of hollow blocks which was in front of the vacant house. There was a little light from the lamp post. She resisted to no avail. H e proceeded to sexually abuse her, while the victim cried for help. A barbecue vendor nearby heard her cries and came to the scene; the accused fled, and the vendor told the victim to tell her parents what happened. Together with her parents, the victim went to the police and reported the incident; the vendor also testified to what he saw during that time. The medical examiner found no injury on the hymen and perineum, but found scanty yellowish discharge between the labia minora; there was also fresh abrasion of the perennial skin at 1 o clock position near the anal opening. The trial court found the victim guilty, declaring that he acted with discernment, but crediting him with the special mitigating circumstance of minority.

Issue: W/N accused had carnal knowledge of the victim, and if yes, whether he acted with discernment, being a minor of age more than 9 years old but less than15?

Decision: YES. Penetration, no matter how slight, or the mere introduction of the male organ into the labia of the pudendum, constitutes carnal knowledge. Hence, even if the penetration is only slight, the fact that the private complainant felt pains, points to the conclusion that the rape was consummated.

Discernment, as used in Article 12(3) of the Revised Penal Code is defined as follows: "the discernment that constitutes an exception to the exemption from criminal liability of a minor under fifteen (15) years of age but over nine (9), who commits an act prohibited by law, is his mental capacity to understand the difference between right and wrong" (*People v. Doquena*, 68 Phil. 580 [1939]).

In the instant case, petitioner's actuations during and after the rape incident, as well as his behavior during the trial showed that he acted with discernment. The fact appears undisputed that immediately after being discovered by the prosecution's witness, Teofisto Bucud, petitioner immediately stood up and ran away. Shortly thereafter, when his parents became aware of the charges against him and that private complainant's father was looking for him, petitioner went into hiding. His flight as well as his act of going into hiding clearly conveys the idea that he was fully aware of the moral depravity of his act and that he knew he committed something wrong.

During the trial, petitioner submitted documentary evidence to show that he was a consistent honor student and has, in fact, garnered several academic awards. This allegation further bolstered that he acted with discernment, with full knowledge and intelligence.

Vindication of a Grave Offense

People v. Torpio
(G.R. No. 138984)

Facts: In the evening of October 11, 1997, Anthony went to the house of Dennisand invited the latter for a drinking spree. Afterwards both left the house of Dennis and went to a nearby store and started drinking with a companion namedPorboy Perez. The three proceeded to Shoreline. In a cottage, Anthony tried tolet Dennis drink gin and as the latter refused, Anthony bathed Dennis with ginand mauled him several times. Dennis crawled beneath the table and Anthonytried to stab him with a 22 fan knife but did not hit him. Dennis got up and rantowards their home.Upon reaching home, he got a knife. Alarmed by the action of Dennis, hismother shouted. Manuel, his father, tried to scold his son and confiscate fromhim the knife but failed to do so, resulting to Manuel is incurring a wound in hishand. He went back to the cottage. Upon seeing Dennis, Anthony ran towardsthe creek but Dennis blocked him and stabbed him. When he was hit, Anthonyran but got entangled with fishing net and fell on his back. Dennis then mountedon him and continued stabbing him resulting to the latter is death. After stabbing,Dennis left and went to Camp Downes and slept there. The next morning, Dennisvoluntarily surrendered himself to Boy Estrera, a well-known police officer. The trial court rendered a judgment convicting Dennis for the crime of Murder qualified by treachery or evident premeditation and appreciating threemitigating circumstances. His father Manuel was acquitted. Not satisfied with the judgment, Dennis appealed his case.

Issue: Whether or not the mitigating circumstances of having acted in the immediate vindication of a grave offense and sufficient provocation be appreciated separately?

Held: No. The Supreme held that the mitigating circumstance of having acted in the immediate vindication of a grave offense was properly appreciated. Dennis was umiliated, mauled and almost stabbed by the Anthony.

Although the unlawful aggression had ceased when Dennis stabbed Anthony, it was nonetheless a grave offense for which the Dennis may be given the benefit of a mitigating circumstance.
However, the mitigating circumstance of sufficient provocation cannot be considered apart from the circumstance of vindication of a grave offense.

These two circumstances arose from one and the same incident, i.e., the attack on the appellant by Anthony, so that they should be considered as only one mitigating circumstance.

PETER ANDRADA *vs*. Pp
G.R. No. 135222. March 04, 2005
(voluntary surrender)

FACTS: In an Information dated January 7, 1987, the Office of the City Prosecutor of Baguio City charged petitioner with frustrated murder, stated as:

That on or about the 24th day of September 1986, in the City of Baguio, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent to kill, with evident premeditation and with treachery, did then and there willfully, unlawfully, and feloniously attack, assault and hack one ARSENIO UGERIO on the head twice with a bolo thereby inflicting upon latter: hacking wound, head, resulting in 1) skull and scalp avulsion vertex; 2) depressed comminuted skull fracture, right parieto occipital with significant brain laceration; operation done; craniectomy; vertex debridement; craniectomy; right parieto occipital; dural repair; debridement, thus performing all the acts of execution which would produce the crime of Murder as a consequence thereof, but nevertheless, the felony was not consummated by reason of causes independent of the will of the accused, that is, by the timely medical attendance extended to Arsenio Ugerio which prevented his death.

CONTRARY TO LAW

On September 24, 1986, at around 1:15 am, Sgt. Sumabong of the defunct Philippine Constabulary and two of his companions, Sgt. Gaces and Cpl. Arsenio Ugerio dropped by in a restaurant in Baguio city for a snacks. While they were waiting to be served, a woman passed by their table. While Cpl. Ugerio was talking to her, a man, later identified as Peter Andrada, herein petitioner, approached the former and scolded him. Sgt. Sumabong, identifying himself as a PC non-commissioned officer, advised petitioner to pay his bill and go home as he was apparently drunk. Petitioner heeded Sgt. Sumabong's advice for he paid his bill and left the restaurant with his companions. While Sgt. Sumabong was paying his bill, he heard Cpl. Ugerio, seated about a meter away, moaning in pain. When Sgt. Sumabong turned around, he saw Cpl. Ugerio sprawled on the floor. Petitioner was hacking him on the head with a bolo. Sgt. Sumabong approached them but petitioner ran away, followed by a companion. Sgt. Sumabong chased them but to no avail.

Upon Sgt. Sumabong's instruction, Sgt. Gaces brought Cpl. Ugerio, the victim, to the St. Louis University Hospital. Then Sgt. Sumabong reported the incident to the police station at Camdas Road and thereafter proceeded to the hospital. When he returned to the police station, he learned that petitioner was arrested in a waiting shed at the corner of Camdas Road and Magsaysay Avenue.

The arresting officers then brought petitioner back to the restaurant where they recovered the bolo used in hacking the victim. Witnesses to the incident were interviewed by the police and they pointed to petitioner as the culprit.

Petitioner interposed self-defense and invoked the mitigating circumstance of voluntary surrender.

ISSUE: Whether or not the accused is entitled to mitigating circumstance of voluntary surrender.

HELD: Evidence for the prosecution shows that petitioner, after attacking the victim, ran away. He was apprehended by responding police officers in the waiting shed at the corner of Cambas Road and Magsaysay Avenue. For voluntary surrender to be appreciated, the surrender must be **spontaneous**, made in such a manner that it shows the interest of the accused to surrender unconditionally to the authorities, either because he acknowledges his guilt or wishes to save them the trouble and expenses that would be necessarily incurred in his search and capture. Here, the surrender was not spontaneous**.**

**evident premeditation is not presumed from mere lapse of time*

People vs. Pio Biso
[G.R. No. 111098-99. April 3, 2003]

Facts: Dario Pacaldo, a black belt in karate, entered an eatery owned by Augustina Yalong. He made sexual advances (embraced and touched Teresita's private parts) on Teresita Yalong, the 14-year-old daughter of Augustina Yalong in the presence of her brother, Eduardo (Buloy). As Dario was older, bigger, taller and huskier than Eduardo, the latter and Teresita could do nothing but to shout for help from their mother Augustina. Dario left the eatery and proceeded to the nearby Gereli Pub House and Disco.

Eduardo contacted his cousin, Pio G. Biso (Bisoy), an ex-convict and a known toughie in the area, and related to him what Dario had done to Teresita. Eduardo and his companions assaulted Dario. Porfirio Perdigones who was on his way home from work saw Eduardo hold, with his right hand, the wrist of Dario and cover with his left hand the mouth of Dario. He also saw Boy Madang and Butso hold Dario's right hand and hair. Pio then stabbed Dario near the breast with a fan knife.

The lower Court finds both accused GUILTY beyond reasonable doubt for the crime of Murder qualified by treachery and evident premeditation not offset by any mitigating circumstances and the Court hereby sentences each of them to suffer imprisonment of reclusion perpetua or life imprisonment.

Issue: WON evident premeditation attended the commission of the crime.

Held: No. Case law has it that qualifying circumstances must be proved with the same quantum of evidence as the crime itself. For evident premeditation to be appreciated, the prosecution is required to prove the following:
… (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.

Evident premeditation is not presumed from mere lapse of time. The prosecution is burdened to prove that the malefactors had decided to commit a crime and performed an "act manifestly indicating that the offender had clung" to a previous determination to kill. It must be shown that there was a period sufficient to afford full opportunity for meditation and reflection, a time adequate to allow the conscience to overcome the resolution of the will, as well as outward acts showing the intent to kill. The premeditation to kill should be plain and notorious. In the absence of clear and positive evidence proving this aggravating circumstance, mere presumptions

and inferences thereon, no matter how logical and probable, would not be enough.

Evident premeditation must be established by clear and convincing evidence that the accused persistently and continuously clung to this resolution despite the lapse of sufficient time for them to clear their minds and overcome their determination to commit the same.

In this case, the prosecution established that the appellant, incensed at seeing the victim molesting his younger sister Teresita, went to Pio, a notorious toughie in the area, and with two cohorts, proceeded to the house of the victim to confront him but failed to see the victim. However, the prosecution failed to prove that the four intended to kill Dario and if they did intend to kill him, the prosecution failed to prove how the malefactors intended to consummate the crime. Except for the fact that the appellant and his three companions waited in an alley for Dario to return to his house, the prosecution failed to prove any overt acts on the part of the appellant and his cohorts showing that that they had clung to any plan to kill the victim.

However, the Court do not agree with the appellant's contention that treachery was not attendant in the commission of the crime.

(*abuse of superior strength absorbed in Treachery)*

PEOPLE OF THE PHILIPPINES vs. PARRENO and QUINDO
[G.R. No. 144343. July 7, 2004]

FACTS: Simplicio and **Frederick** were with **Anthony** and two of their other friends, **Agripino** Santos and **Ricardo**Deocareza. They wanted to buy food from a nearby store. As they were walking, they saw six persons on the other side of the street including Appellants **Parreno and Quindo**. Appellant Quindo then challenged them to a fight.

One of the men had a slingshot (tirador). Anthony's group turned and started to walk away, but when they saw that two male persons had started running after them, they also ran. Anthony and Simplicio ran ahead. Agripino followed. When Anthony noticed that Frederick and Ricardo had been left behind, he told Simplicio and Agripino to go back to where their two other companions were. Anthony had then gone a little further ahead.

Suddenly, Anthony was cornered by two persons. Four others also appeared. Three of the men ran towards the school, while three others remained: appellants**Parreno**,**Quindo** and **another** "circled" upon Anthony. ***Appellant Parreno, who was then standing behind Anthony, suddenly stabbed the latter with his right hand.***Anthony died shortly after being brought to the provincial hospital.

Trial Court finds accused RicsonParreno and Delbert Quindo GUILTY beyond reasonable doubt of the crime of Murder. Hence this present appeal.

ISSUE: Whether Abuse of Superior Strength and Treachery are separate aggravating circumstances in the case at bar.

RULING: The trial court correctly appreciated the qualifying circumstance of treachery against the appellants. The elements for treachery to be appreciated as qualifying circumstance are (a) the employment of means of execution which gives the person attacked no opportunity to defend himself or retaliate; and (b) the means of execution is deliberately or consciously adopted. Even a frontal attack may be considered treacherous when sudden and unexpected, and employed on an unarmed victim who would not be in a position to repel the attack or to avoid it. The essence of treachery is the swiftness and unexpectedness of the attack on the unarmed victim.

In the case at bar, Anthony and his friends had merely gone out to buy some food. The appellants and their companions chanced upon the victim's group, and without warning, threatened the latter. A game of "cat and mouse" ensued, with the appellants on the winning end, as they were armed with a tirador and a knife. The chase ended with the unarmed victim, Anthony, being cornered and trapped, and thereafter, stabbed fatally on the back. With the allegation of treachery in the information having been proven, the same is treated as a circumstance that qualified the killing to murder, pursuant to Article 248(1) of the Revised Penal Code.

As regards the aggravating circumstance of abuse of superior strength, what should be considered is not that there were three, four, or more assailants as against one victim, but whether the aggressors took advantage of their combined strength in order to consummate the offense. While it is true that superiority in number does not per se mean superiority in strength, the appellants in this case did not only enjoy superiority in number, but were armed with a weapon, while the victim had no means with which to defend himself. Thus, there was obvious physical disparity between the protagonists and abuse of superior strength on the part of the appellants. Abuse of superior strength attended the killing when the offenders took advantage of their combined strength in order to consummate the offense.***However, the circumstance of abuse of superior strength cannot be appreciated separately, it being necessarily absorbed in treachery.***

(ignominy - dismembered body)

PEOPLE OF THE PHILIPPINES VS. CACHOLA
G.R. Nos. 148712-15
January 21, 2004

FACTS: On December 28, 1999, at 6:00PM, two armed men suddenly entered Barnachea residence in Barangay Calumbaya, Bauang, La Union. The two ordered a 12-year old boy, Jessie E. Barnachea, to drop the floor by hitting him in the back with the butt of a long gun. They hurriedly proceeded to the living room and shot Jessie's uncle, VictorinoLolarga, and continued shooting in the kitchen hitting his mother Carmelita Barnachea, his brother Felix Barnachea, Jr., and his cousin RubensonAbance.

His eldest brother, Robert E. Barnachea, who then was in his uncle's house, noticed a stainless jeep, with blue rim and marking "fruits and vegetables dealer," and with the description of the "El Shaddai" parked in front of the fence of their house. Also, the jeep did not go unnoticed by the neighbors, RusselTamba and Francisco Andrada.

The incident was immediately reported to the police and at around 7:45 p.m., the jeep was intercepted at a checkpoint set up in the highway by the police force in Aringay, La Union. On board were the eight appellants. No firearms were found in the vehicle. The jeep and the eight appellants were thereafter brought to the Aringay police station and then turned over to the Bauang police. Jessie was able to identify two of the eight appellants by the name

of Cachola and Amay as the two assailants who entered the house. The next day a paraffin test was conducted on the appellants.

The Death Certificates attest to the gruesome and merciless killings. Carmelita sustained one gunshot wound on her head and three on her body; Felix, Jr., two gunshot wounds on his head and on his body, and stab wounds on his chest and arms; Victorino, two gunshot wounds on his head, three on his body, and with his penis excised; Rubenson, one gunshot wound on his head and a stab wound that lacerated his liver.

RTC convicted all the eight appellants but the Office of the Solicitor General (OSG) recommended the affirmance of the conviction for murder of appellants Cachola and Amay, and the acquittal of the other appellants for failure of the prosecution to establish their identity and participation beyond reasonable doubt.

ISSUE: Whether or not excising of penis amounts to ignominy that can aggravate the offense charged?

RULING: NO. For ignominy to be appreciated, it is required that the offense be committed in a manner that tends to make its effect more humiliating, thus adding to the victim's moral suffering. Where the victim was already dead when his body or a part thereof was dismembered, ignominy cannot be taken against the accused.

In this case, the information states that Victorino's sexual organ was severed after he was shot and there is no allegation that it was done to add ignominy to the natural effects of the act. We cannot, therefore, consider ignominy as an aggravating circumstance.

SC sustained the conviction of Cachola and Amay but the rest of the six appellants were acquitted for the crime charged for insufficiency of evidence.

PP vs Evina

F: Spouses Basilio Catcharro and Luciana Evaller lived in a one-bedroom house in Paseo de Legaspi, Tacloban City. They had a daughter, Ma. Maritess Catcharro, who was born on July 15, 1980 and was then a Grade III pupil at the Anibong Community School.

In the evening of November 3, 1991, Luciana, along with the appellant's mother, went to the barangay captain to check out a cash loan transaction. Left in the house were Basilio, Maritess, the latter's older sister, and some visitors. Basilio was at the balcony whiling away time, and Maritess was busy playing by herself. Meanwhile, a drinking spree was on-going at the living room. At around 9:00 p.m., Maritess decided to retire for the night. She proceeded to the bedroom and though it was not lighted, she saw the appellant inside the room, just sitting there. Unconcerned, Maritess went to bed to sleep. But before she finally dozed off, she noticed that the appellant had locked the door. Maritess was suddenly awakened by the appellant, who immediately gagged her mouth with her red dress. The appellant tied her hands with a big handkerchief and poked a knife at her. He ordered Maritess to keep quiet. He then took off her undergarment and undressed himself. He mounted Maritess and thrust his penis into her vagina. The appellant's penis penetrated her vagina by about half an inch. He then made a push and pull movement. Maritess felt excruciating pain. While pumping, he ejaculated. Maritess felt something come out from the appellant's penis. Satiated, he dismounted and untied Maritess. He warned her not to breathe a word of what had happened, otherwise he would kill her and the rest of her family. The appellant then ordered Maritess to leave the room. Maritess did as she was told, and went to the sala where she watched television. Maritess did not tell her father about the harrowing incident because she feared that she and her family might indeed be killed.

Much later, Luciana returned home from her errand and noticed the appellant coming out of the bedroom. She did not suspect that anything was amiss. She went into the room and saw her daughter Maritess, already sleeping.

At about 5:00 p.m. of November 7, 1991, Maritess was left at home alone. Her mother had earlier gone to her father's place of work. Maritess was playing at the balcony when the appellant arrived, apparently looking for something. Thereafter, the appellant called Maritess to the bedroom and told her to lie down. When she refused, the appellant forced her to lie down, gagged her mouth and tied her hands. He poked a knife at her and touched her thigh. The appellant undressed her, then himself, and inserted his penis into Maritess' vagina. The penis, as before, penetrated the vagina by about half an inch. Again, Maritess experienced excruciating pain. After satisfying his lust, the appellant warned her not to tell anyone about the incident, otherwise he would kill them all. Because Maritess had already seen the appellant kill someone, she feared that the appellant might make good his threat. She did not reveal her traumatic ordeal to her parents or to anyone.

On November 13, 1991, the appellant arrived at the Catcharro residence and proceeded to the bedroom. Maritess, who was inside the bedroom, ran out and told her mother who was about to leave: "Mama, do not leave us alone. Papa Gerry might rape me again." Luciana was shocked at her daughter's revelation. She examined the vagina of Maritess and saw pus cells and blood. Luciana brought her daughter to the police station, where she was advised to have Maritess examined by a doctor.

H: Although the special aggravating circumstance of the use of a weapon and the aggravating circumstance of dwelling were proven, these aggravating circumstances cannot be considered in fixing the penalty because they were not alleged in the information as mandated by Rule 110, Sections 8 and 9 of the Revised Rules of Criminal Procedure. Although the crimes charged were committed before the effectivity of the said rule, nevertheless, the same should be applied retroactively being favorable to the appellant.

Although the aggravating circumstances in question cannot be appreciated for the purpose of fixing a heavier penalty in this case, they should, however, be considered as bases for the award of exemplary damages, conformably to current jurisprudence.

The victim, Ma. Maritess Catcharro, is entitled to an award of civil indemnity *ex delicto* in the amount of ₱50,000 for each count of rape. In addition, the victim is entitled to an amount of ₱50,000 as moral damages for each count of rape, without need of pleading or proof of the basis thereof. The victim's injury is concomitant with and necessarily resulting from the odiousness of the crime to warrant *per se* the award of moral damages.

Conformably to the ruling in *People v. Catubig*, the victim is entitled to an award of ₱25,000 as exemplary damages for each count of rape.

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* ARTURO F. PACIFICADOR

F: On October 27, 1988, herein respondent, Arturo Pacificador y Fullon, and his erstwhile co-accused, Jose T. Marcelo, were charged before the Sandiganbayan with the crime of violation of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

Arturo Pacificador, then Chairman of the Board of the National Shipyard and Steel Corporation, a government-owned corporation, and therefore, a public officer, and Jose T. Marcelo, Jr., then President of the Philippine Smelters Corporation, a private corporation, conspiring and confederating with one another and with other individuals, did then and there, wilfully, unlawfully and knowingly, and with evident bad faith promote, facilitate, effect and cause the sale, transfer and conveyance by the National Shipyard and Steel Corporation of its ownership and all its titles, rights and interests over parcels of land in Jose Panganiban, Camarines Norte where the Jose Panganiban Smelting Plant is located including all the reclaimed and foreshore areas of about 50 hectares to the Philippine Smelters Corporation by virtue of a contract, the terms and conditions of which are manifestly and grossly disadvantageous to the Government as the consideration thereof is only P85,144.50 while the fair market value thereof at that time was P862,150.00, thereby giving the Philippine Smelters Corporation unwarranted benefits, advantages and profits and causing undue injury, damage and prejudice to the government in the amount of P777,005.50.

On February 3, 1999, the Sandiganbayan dismissed the Information in Criminal Case No. 139405 against the respondent on the ground of prescription on the ground that as the offense involved is the violation of R.A. 3019, a special law, it follows that in computing the prescriptive period of the offense, it is not the provision contained in the Revised Penal Code that should govern but that of Act No. 3326.

Petitioner contends that, contrary to the ruling of the Sandiganbayan, the provision of Act No. 3326 on prescription of offenses punishable under special laws is not applicable to the instant criminal case for the reason that Republic Act No. 3019 provides for its own prescriptive period. Section 11 thereof provides that offenses committed and punishable under the said law shall prescribe in fifteen (15) years. However, inasmuch as Republic Act No. 3019 does not state exactly when the fifteen-year prescriptive period begins to run, Article 91 of the Revised Penal Code should be applied suppletorily.

Petitioner also contends that the crime, subject of this case should be deemed as discovered only on May 13, 1987 when a complaint was filed with the Presidential Commission on Good Government (PCGG) by the then Solicitor General Francisco Chavez. Hence, the filing of the information on October 27, 1988 with the Sandiganbayan was well within the prescriptive period.

Additionally, petitioner contends that the ordinary principles of prescription do not apply in this case for the reason that the respondent effectively concealed his criminal acts which prevented the discovery of the offense until May 13, 1987. Even on the assumption that the registration of the Deed of Sale was on December 29, 1975 when that document was executed by the parties, and thus, amounted to a constructive notice to the whole world of the existence of the said Deed of Sale, the registration thereof could not have given notice of fraudulent acts of the parties to the sale. The situation prevailing at that time, that is, during the authoritarian regime of then President Ferdinand E. Marcos, did not permit the investigative and prosecuting arms of the government to institute complaints against him, his wife and his cronies.

H: It has been settled that Section 2 of Act No. 3326 governs the computation of prescription of offenses defined and penalized by special laws. In the case of *People v. Sandiganbayan*, this Court ruled that Section 2 of Act No. 3326 was correctly applied by the anti-graft court in determining the reckoning period for prescription in a case involving the crime of violation of Republic Act No. 3019, as amended. In the fairly recent case of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto,* we categorically ruled that:

Since the law alleged to have been violated, i.e., paragraphs (e) and (g) of Section 3, R.A. No. 3019, as amended, is a special law, the applicable rule in the computation of the prescriptive period is Section 2 of Act No. 3326, as amended, which provides:

Sec. 2. Prescription should begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and institution of judicial proceedings for its investigation and punishment. (Emphasis ours)

The prescription shall be interrupted when the proceedings are instituted against the guilty person and shall begin to run again if the proceedings are dismissed for reasons not constituting double jeopardy.

This simply means that if the commission of the crime is known, the prescriptive period shall commence to run on the day it was committed.

It can be gleaned from the Information in this case that respondent Pacificador allegedly committed the crime charged "on or about and during the period from December 6, 1975 to January 6, 1976." Section 11 of R.A. No. 3019, as amended by B.P. Blg. 195, provides that the offenses committed under the said statute shall prescribe in fifteen (15) years. It appears however, that prior to the amendment of Section 11 of R.A. No. 3019 by B.P. Blg. 195 which was approved on March 16, 1982, the prescriptive period for offenses punishable under the said statute was only ten (10) years. The longer prescriptive period of fifteen (15) years, as provided in Section 11 of R.A. No. 3019 as amended by B.P. Blg. 195, does not apply in this case for the reason that the amendment, not being favorable to the accused (herein private respondent), cannot be given retroactive effect. Hence, the crime prescribed on January 6, 1986 or ten (10) years from January 6, 1976.

The petitioner, however, vehemently denies having any knowledge of the crime at the time it was allegedly committed by the respondent. It claims that the crime charged in the Information should be deemed as discovered only on May 13, 1987 when the

then Solicitor General, Francisco Chavez, filed a complaint with the Presidential Commission on Good Government (PCGG) against the respondent, for violation of the provision of R.A. No. 3019, as amended.

We are not convinced. This Court takes notice of the fact that the subject Deed of Sale dated December 29, 1975 relative to the sale of the parcels of land by the National Steel Corporation to the Philippine Smelters Corporation, was registered shortly thereafter in the Registry of Deeds of the Province of Camarines Norte. Subsequently, the Original Certificate of Title No. 0440 in the name of the National Steel Corporation was cancelled and in lieu thereof Transfer Certificate of Title No. 13060 was issued in the name of the vendee Philippine Smelters Corporation. On February 28, 1977, the Philippine Smelters Corporation even filed an action for quieting of title with the then Court of First Instance of Camarines Norte, docketed therein as Civil Case No. 2882, which case forms the basis for the Sandiganbayan to deduce that the subject Deed of Sale may be deemed registered on the said date, at the latest.

While petitioner may not have knowledge of the alleged crime at the time of its commission, the registration of the subject Deed of Sale with the Registry of Deeds constitutes constructive notice thereof to the whole world inlcuding the petitioner. Well entrenched is the jurisprudential rule that registration of deeds in the public real estate registry is a notice thereof to the whole world. The registration is a constructive notice of its contents as well as all interests, legal and equitable, included therein. All persons are charged with the knowledge of what it contains. Hence, even if the period of prescription is reckoned from February 28, 1977, the crime had already prescribed when the Information in this case was filed with the Sandiganbayan on October 27, 1988.

It bears emphasis, as held in a number of cases, that in the interpretation of the law on prescription of crimes, that which is more favorable to the accused is to be adopted. The said legal principle takes into account the nature of the law on prescription of crimes which is an act of amnesty and liberality on the part of the state in favor of the offender.

In the case at bar, the petitioner contends that respondent concealed his criminal acts that effectively prevented discovery thereof. The records of this case do not specifically show how the respondent allegedly employed acts that could prevent the discovery of any illegality in the transaction other than the bare assertion of the petitioner. There is also no allegation that the government officials involved in the transactions connived or conspired with respondent Pacificador. The said government officials were not even charged in the instant Information. On the other hand, it was never disputed by the petitioner that the subject Deed of Sale was duly registered with the Registry of Deeds of the Province of Camarines Norte and that the corresponding Transfer Certificate of Title No. 13060 was subsequently issued to the vendee, Philippine Smelters Corporation.

In view of the foregoing, we do not find it necessary to discuss the other points raised by the respondent in his Comment as additional grounds for the denial of the instant petition.

Side note: In the case of *People v. Moran*, this Court amply discussed the nature of the statute of limitations in criminal cases, as follows:

The statute is not a statute of process, to be scantily and grudgingly applied, but an amnesty, declaring that after a certain time oblivion shall be cast over the offense; that the offender shall be at liberty to return to his country, and resume his immunities as a citizen; and that from henceforth he may cease to preserve the proofs of his innocence, for the proofs of his guilt are blotted out. Hence, it is that statutes of limitation are to be liberally construed in favor of the defendant, not only because such liberality of construction belongs to all acts of amnesty and grace, but because the very existence of the statute is a recognition and notification by the legislature of the fact that time, while it gradually wears out proofs of innocence, has assigned to it fixed and positive periods in which it destroys proofs of guilt.

The instant case should be distinguished from the cases of *People v. Duque* and *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto* wherein we upheld the view that the prescriptive period started to run only upon the discovery of the illegal nature of the acts constituting the offense. The first case involves the crime of illegal recruitment where the accused, Napoleon Duque, was found to have misrepresented himself to several job applicants as a registered employment agent duly recognized by the Philippine Overseas Employment Agency (POEA). Due to the said misrepresentation of the accused, the applicable prescriptive period began to run not from the time of recruitment of job applicants by the accused but from the time his recruitment activities were ascertained by the complainants and the POEA to have been carried out without any license or authority from the government. The second, or *Desierto* case, which was decided by this Court on October 25, 1999, involves the grant of alleged behest loans by certain government-owned and controlled financial institutions to several individuals and corporations closely associated with the then President Ferdinand E. Marcos and his relatives. It was alleged that the public officials concerned, who were charged in the corresponding Informations, connived or conspired with the beneficiaries of the loans in covering up the anomalous transactions. Under the circumstances, it was impossible for the State, the aggrieved party, to have known the violations of R.A. No. 3019 at the time the questioned transactions were made. The prescriptive period started to run only upon discovery of the alleged illegality of the transactions after the investigations thereon were conducted.

PEOPLE OF THE PHILIPPINES, plaintiff-apellee,
vs.
JUANITO Q. AQUINO, accused-appellant.

Facts: Appellant Juanito Q. Aquino was charged with rape with homicide. In a motion dated June 26, 1987, counsel for appellant moved for the indefinite suspension of the trial and asked for the commitment of the accused to the National Mental Hospital. [2] In its order dated July 1, 1987, the trial court granted the motion and held in abeyance the arraignment of the accused and the trial of the case. [3] On January 26, 1988, the National Center for Mental Health submitted the clinical case report on the mental and physical condition of appellant. [4] He was later returned to the custody of the court for trial and was arraigned on April 27, 1988. [5]

After trial on the merits, the court *a quo* rendered its verdict convicting appellant of the crime of rape with homicide and sentenced him to suffer life imprisonment and to indemnify the heirs of the deceased in the amount of P35,000.00 as damages. [7]

Held: The trial court imposed the penalty of life imprisonment on appellant. In a judgment of conviction for a felony, the court should specify the appropriate name of the penalty, which in this case should be *reclusion perpetua* and not life imprisonment, since under the scheme of penalties in the Revised Penal Code the principal penalty for a felony has its own specific duration and corresponding accessory penalties, unlike those generally provided for crimes in special laws.

PEOPLE OF THE PHILIPPINES, *appellee, vs.* NOLI NOVIO y AYASO, *appellant*.

This is an appeal from the decision of the Regional Trial Court, Branch 6, Tacloban City, in Criminal Case No. 94-09-447 finding appellant Noli Novio y Ayaso guilty beyond reasonable doubt of rape, sentencing him to thirty years of *reclusion perpetua* and ordering him to pay P50,000 to the victim, as civil indemnity.

Facts: The appellant was charged with rape with one MARICEL B. TALISAY, a minor, while the latter was deprived of reason or otherwise unconscious, as she was then asleep, against her will, with the aggravating circumstance of dwelling.

On May 17, 1985, Noli was arraigned, assisted by counsel and offered to plead guilty to the lesser offense of acts of lasciviousness. The trial court asked the offended party, Maricel Talisay, whether she was in conformity with Noli's plea. Maricel did not give her assent, thus, the plea was rejected. The trial court then entered a plea of not guilty to the crime charged.

Held: Under Article 335 of the Revised Penal Code, as amended by Republic Act 7659, the prescribed penalty for simple rape is *reclusion perpetua*. However, the trial court sentenced the appellant to thirty years of *reclusion perpetua*. The penalty imposed by the trial court is void. Although under Article 27 of the Revised Penal Code as amended by Republic 7659, *reclusion perpetua* has a range of twenty years and one day to forty years, by nature, the penalty remains a single and indivisible penalty. It cannot be divided into periods or equal portions. If the law prescribes *reclusion perpetua* as a single and indivisible penalty for a felony, the trial court is mandated to impose said penalty, absent any privileged mitigating circumstances conformably with Article 63 of the Revised Penal Code. The trial court is not authorized to vary the penalty provided for by law either in the character or the extent of punishment inflicted.

There was no need for the trial court to specify the duration of thirty years of *reclusion perpetua* whenever it is imposed as a penalty in any proper case. The Court is not impervious to Article 70 of the Revised Penal Code which pertinently provides that, in applying the so-called "three-fold rule," i.e., that "(w)hen the culprit has to serve two or more penalties, . . . the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him" – "the duration of perpetual penalties (*penal perpetua*) shall be computed at thirty years." The imputation of a thirty-year duration to *reclusion perpetua* in Article 70 is, as this Court recently held, "only to serve as the basis for determining the convict's eligibility for pardon or for the application of the three-fold rule in the service of multiple penalties.

The appellant testified on direct examination on June 21, 1996, that he was 17 years old when the crime was committed in 1994. However, he did not adduce in evidence his birth certificate. Neither did he state when he was born. There is thus an uncertainty as to whether the appellant was a minor at the time of the commission of the felony. Moreover, when he was asked on cross-examination if he was only sixteen years old when the crime was committed, the appellant replied that he did not know.

PEOPLE OF THE PHILIPPINES, appellee,
vs.
MELECIO ROBIÑOS y DOMINGO, appellant.

Where the law prescribes a penalty consisting of two indivisible penalties, as in the present case for parricide with unintentional abortion, the lesser one shall be applied in the absence of any aggravating circumstances. Hence, the imposable penalty here is *reclusion perpetua*, not death.

Facts: appellant was accused of killing his pregnant wife and the fetus inside her by stabbing thru a bladed knife 8 inches long, his legitimate wife Lorenza Robinos, who was, then six (6) months pregnant causing the instantaneous death of said Lorenza Robinos, and the fetus inside her womb."[5]

When arraigned on July 27, 1995, appellant, with the assistance of his counsel,[6] pleaded not guilty.[7] After due trial, the RTC convicted him.RTC rejected the defense of insanity and impose death penalty on appellant.

Held: Although the RTC correctly rejected the defense of insanity, it nonetheless erred in imposing the death penalty on appellant. It imposed the maximum penalty without considering the presence or the absence of aggravating and mitigating circumstances. The imposition of the capital penalty was not only baseless, but contrary to the rules on the application of penalties as provided in the Revised Penal Code. Even the Office of the Solicitor General concedes this error in the imposition of the death penalty.[32]

Since appellant was convicted of the complex crime of parricide with unintentional abortion, the penalty to be imposed on him should be that for the graver offense which is parricide. This is in accordance with the mandate of Article 48 of the Revised Penal Code, which states: "*When a single act constitutes two or more grave or less grave felonies, x x x, the penalty for the most serious crime shall be imposed, x x x.*"

The law on parricide, as amended by RA 7659, is punishable with *reclusion perpetua* to death. In all cases in which the law prescribes a penalty consisting of two indivisible penalties, the court is mandated to impose one or the other, depending on the presence or the absence of mitigating and aggravating circumstances.[33] The rules with respect to the application of a penalty consisting of two indivisible penalties are prescribed by Article 63 of the Revised Penal Code, the pertinent portion of which is quoted as follows:

"In all cases in which the law prescribes a *penalty composed of two indivisible penalties*, the following rules shall be observed in the application thereof:

x x x x x x x x x

2. *When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied."* (Italics supplied)

Hence, when the penalty provided by law is either of two indivisible penalties and there are neither mitigating nor aggravating circumstances, the lower penalty shall be imposed.[34] Considering that neither aggravating nor mitigating circumstances were established in this case, the imposable penalty should only be *reclusion perpetua*.[35]

Indeed, because the crime of parricide is not a capital crime per se, it is not always punishable with death. The law provides for the flexible penalty of *reclusion perpetua* to death -- two indivisible penalties, the application of either one of which depends on the presence or the absence of mitigating and aggravating circumstances.

Note: Compare PP vs Gonzales, Pp vs Abubu, and Pp vs Sanidad

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
INOCENCIO GONZALEZ, JR., accused-appellant.

Facts: On a day intended to pay homage to the dead, a pregnant woman was shot to death in the course of her husband's altercation with the accused-appellant and his son along the Garden of Remembrance within the Loyola Memorial Park in Marikina. The trial court found the accused guilty of the complex crime of murder and two counts of frustrated murder and accordingly sentenced him to death. This case is before us on automatic review.

Held: The rules on the imposition of penalties for complex crimes under Art. 48 of the Revised Penal Code are not applicable in this case. Art. 48 applies if a single act constitutes two or more grave and less grave felonies or when an offense is a necessary means of committing another; in such a case, the penalty for the most serious offense shall be imposed in its maximum period. Art. 9 of the Revised Penal Code in relation to Art. 25 defines grave felonies as those to which the law attaches the capital punishment or afflictive penalties from reclusion perpetua to prision mayor; less grave felonies are those to which the law attaches a penalty which in its maximum period falls under correctional penalties; and light felonies are those punishable by arresto menor or fine not exceeding two hundred pesos. Considering that the offenses committed by the act of the appellant of firing a single shot are one count of homicide, a grave felony, and two counts of slight physical injuries, a light felony, the rules on the imposition of penalties for complex crimes, which requires two or more grave and/or less grave felonies, will not apply.

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* ANTONIO ABUBU y VALDEZ, alias "BOY VALDEZ," *accused-appellant*

Facts: ANTONIO ABUBU y VALDEZ alias "Boy Valdez," JESUS VALDEZ y BUENO, OSCAR DIMARUCUT, RENATO MANABAT and REY MANABAT were charged before the Regional Trial Court of Cauayan, Isabela, Br. 19, with murder for the death of JULIUS GOLOCAN and three (3) counts of frustrated murder for the injuries sustained by FLORDELIZA, JOHN PAUL and NOEMI, all surnamed Golocan, under four (4) separate Informations, docketed as Crim. Cases Nos. 19-952 to 19-955. Only Antonio Abubu and Jesus B. Valdez were subsequently apprehended and arraigned, while Oscar Dimarucut, Renato Manabat and Rey Manabat have remained at large.

Julius Golocan, his wife Flordeliza and two (2) children - one-year old John Paul and three-month old Noemi - lived in Barangay Pinoma, Cauayan, Isabela. On 18 February 1996 at around 5:30 in the afternoon Flordeliza was preparing food for her children when she heard knockings at their front door. She peeped through an opening in the window and saw accused-appellant Antonio Abubu with four (4) companions. Julius, who was carrying John Paul in his arms, opened the door. He then went outside to the balcony and talked to accused-appellant and his companions. While Julius was talking to them, Flordeliza carrying Noemi joined them. Suddenly, the group drew their guns and started shooting Julius, Flordeliza and their two (2) children. The assault left Julius dead and his wife and two (2) children critically injured.

On 29 October 1996 the Regional Trial Court acquitted accused Jesus Valdez for failure of the prosecution to prove his guilt beyond reasonable doubt. The trial court however convicted accused-appellant Antonio Abubu of the crime of murder complexed with multiple frustrated murder and sentenced him to suffer the supreme penalty of death. The trial court further ordered accused-appellant to pay the heirs of Julius Golocan ₱50,000.00 as compensatory damages, ₱200,000.00 as moral damages, ₱20,000.00 for funeral expenses, and ₱27,000.00 as reimbursement for the survivors' medical expenses. His case is now before us on automatic review pursuant to Art. 47, 2nd par., of the Revised Penal Code as amended.

Held: Accused-appellant's guilt as established, however, does not warrant his conviction for the complex crime of murder with multiple frustrated murder. Instead, he must be convicted of the separate crimes of murder and three (3) counts of frustrated murder as alleged in four (4) separate Informations.

On the concept of a complex crime, Art. 48 of the Revised Penal Code provides: "When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." The instant case does not fall under any of the two (2) mentioned instances wherein a complex crime is committed. The evidence on record shows that the killing of Julius Golocan and the wounding of his wife Flordeliza and their children John Paul and Noemi resulted not from a single act but from several and distinct acts of shooting. For one thing, the evidence indicates that not only one gunman was involved, and the act of each gunman was distinct from that of the others. Moreover, there were two (2) empty shells recovered at the crime scene which confirms the fact that several shots were fired. Furthermore, considering the relative positions of the gunmen who

surrounded the victims, it was absolutely impossible for the four (4) victims to have been hit by a single bullet. Each act of pulling the the trigger of his firearm by each gunman and aiming it at different persons constitute distinct and individual acts which cannot give rise to the complex crime of murder with multiple frustrated murder.

Of the qualifying circumstances of evident premeditation and treachery alleged in the Information the prosecution proved only treachery. The manner by which Julius was shot and killed shows that the attack was sudden and unexpected to the point of incapacitating him to repel or escape it. Furthermore, the fact that Julius was carrying his son John Paul when the assault was made indicates that he was not in a position to defend himself. Also, the concerted and synchronized actions of the assailants in pulling their handguns and shooting the victims could only mean that they consciously adopted the treacherous method and form of attack. Treachery was, without doubt, present.

The penalty for murder under Art. 248 of the Revised Penal Code is *reclusion perpetua* to death. Corollarily, Art. 63, second par., provides that *"[i]n all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof: x x x x 2. [w]hen there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied."* Thus, the imposable penalty being composed of two (2) indivisible penalties, and in the absence of any modifying circumstance, the lesser penalty of *reclusion perpetua* shall be imposed on accused-appellant for the killing of Julius G. Golocan.

As regards the frustrated murder of Flordeliza, John Paul and Noemi, the penalty one degree lower than *reclusion perpetua* to death, which is *reclusion temporal*, shall be imposed pursuant to Art. 248 of the Revised Penal Code in relation to Art. 50 thereof. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances, the maximum penalty to be imposed shall be taken from the medium period of the imposable penalty which is *reclusion temporal* medium, the range of which is fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is *prision mayor* in any of its periods, the range of which is six (6) years and one (1) day to twelve (12) years.

PEOPLE OF THE PHILIPPINES, appellee,
vs.
JIMMEL SANIDAD, PONCE MANUEL alias PAMBONG, JOHN DOE (at large) and PETER DOE (at large), accused.
JIMMEL SANIDAD and PONCE MANUEL alias PAMBONG, appellants

F/H: We fully agree with the lower court that the instant case comes within the purview of Art. 48 of *The Revised Penal Code* which, speaking of complex crimes, provides that when "a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed in its maximum period." In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law as well as in the conscience of the offender.[25]

Although several independent acts were performed by the accused in firing separate shots from their individual firearms, it was not possible to determine who among them actually killed victim Rolando Tugadi. Moreover, there is no evidence that accused-appellants intended to fire at each and every one of the victims separately and distinctly from each other. On the contrary, the evidence clearly shows a single criminal impulse to kill Marlon Tugadi's group as a whole.[26] Thus, one of accused-appellants exclaimed in frustration after the ambush: "My gosh, we were not able to kill all of them."[27] Where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a single complex offense.[28]

The penalty for the most serious offense of murder under Art. 248 of *The Revised Penal Code* as amended by Rep. Act No. 7659 is *reclusion perpetua* to death. It therefore becomes our painful duty in the instant case to apply the maximum penalty in accordance with law, and sentence accused-appellants to death.

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs.* JEFFREY GARCIA y CARAGAY and THREE JOHN DOES, *accused*.

F: This is an automatic review pursuant to Article 47 of the Revised Penal Code, as amended by Section 22 of Republic Act No. 7659, of the decision of the Regional Trial Court of Baguio City, Branch 6, dated October 28, 1999, convicting accused-appellant Jeffrey Garcia y Caragay of Forcible Abduction with Rape and three counts of Rape, and sentencing him to death.

H: In the case at bar, the information sufficiently alleged the elements of forcible abduction, *i.e.,* the taking of complainant against her against her will and with lewd design. It was likewise alleged that accused-appellant and his three co-accused conspired, confederated and mutually aided one another in having carnal knowledge of complainant by means of force and intimidation and against her will.

Aside from alleging the necessary elements of the crimes, the prosecution convincingly established that the carnal knowledge was committed through force and intimidation. Moreover, the prosecution sufficiently proved beyond reasonable doubt that accused-appellant succeeded in forcibly abducting the complainant with lewd designs, established by the actual rape.

Hence, accused-appellant is guilty of the complex crime of forcible abduction with rape. He should also be held liable for the other three counts of rape committed by his three co-accused, considering the clear conspiracy among them shown by their obvious concerted efforts to perpetrate, one after the other, the crime. As borne by the records, all the four accused helped one another in consummating the rape of complainant. While one of them mounted her, the other three held her arms and legs. They also burned her face and extremities with lighted cigarettes to stop her from warding off her aggressor. Each of them, therefore, is responsible not only for the rape committed personally by him but for the rape committed by the others as well.

However, as correctly held by the trial court, there can only be one complex crime of forcible abduction with rape. The crime of forcible abduction was only necessary for the first rape. Thus, the subsequent acts of rape can no longer be considered as separate complex crimes of forcible abduction with rape. They should be

detached from and considered independently of the forcible abduction. Therefore, accused-appellant should be convicted of one complex crime of forcible abduction with rape and three separate acts of rape.

The penalty for complex crimes is the penalty for the most serious crime which shall be imposed in its maximum period. Rape is the more serious of the two crimes and, when committed by more than two persons, is punishable with *reclusion perpetua* to death under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. Thus, accused-appellant should be sentenced to the maximum penalty of death for forcible abduction with rape.

As regards the other three acts of rape, accused-appellant can only be sentenced to *reclusion perpetua.* The trial court appreciated the aggravating circumstances of nighttime, superior strength and motor vehicle. However, these were not alleged in the information. Under the amended provisions of Rule 110, Sections 8 and 9 of the Revised Rules on Criminal Procedure, which took effect on December 1, 2000, aggravating as well as qualifying circumstances must be alleged in the information, otherwise, they cannot be considered against the accused even if proven at the trial. Being favorable to accused-appellant, this rule should be applied retroactively in this case. Hence, there being no aggravating circumstance that may be appreciated, and with no mitigating circumstance, the lesser of the two indivisible penalties shall be applied, pursuant to Article 63, paragraph (2) of the Revised Penal Code.

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* REYNALDO VELASQUEZ y OCAMPO, *accused-appellant.*

The accused, Reynaldo Velasquez y Ocampo (VELASQUEZ) was charged with the crimes of rape and forcible abduction with rape. On February 20, 1997, VELASQUEZ was arraigned and with assistance of counsel entered a plea of not guilty to both crimes charged.[2]Thereafter, joint trial ensued.

In sentencing VELASQUEZ, the trial court overlooked the fact that he was charged with simple rape in Criminal Case No. 97-0035 and forcible abduction with rape in Criminal Case No. 97-0036 and erroneously convicted VELASQUEZ of two counts of simple rape only. Considering that the prosecution was able to prove beyond reasonable doubt that VELASQUEZ forcibly abducted AAA and then raped her twice, he should be convicted of the complex crime of forcible abduction with rape and simple rape. The penalty for complex crimes is the penalty for the most serious crime which shall be imposed in its maximum period.[18] Rape is the more serious of the two crimes and is punishable with *reclusion perpetua* under Article 335 of the Revised Penal Code and since *reclusion perpetua* is a single indivisible penalty, it shall be imposed as it is.[19] The subsequent rape committed by VELASQUEZ can no longer be considered as a separate complex crime of forcible abduction with rape but only as a separate act of rape punishable by *reclusion perpetua*.[20]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. DIOMEDES MAGALLANO and MARCELO MAGALLANO, *accused-appellants*.

G.R. No. 77228 November 13, 1992

F: Hitting birds; murder

H: Finally, in view of the position taken by plaintiff-appellee in its brief, it should again be stressed that on the question of whether the passage of Republic Act No. 7659 has transformed the indivisible nature of *reclusion perpetua* into a divisible one because of its "defined duration" ranging from 20 years and 1 day to 40 years, we have already ruled in the negative. In an *En Banc* Resolution of January 9, 1995,[17] rendered on a motion for clarification of the Court's decision in *People vs. Lucas*,[18] it was explained that "(a)fter deliberating on the motion and re-examining the legislative history of R.A. No. 7659, the Court concludes that although Section 17 of R.A. No. 7659 has fixed the duration of*reclusion perpetua* from twenty (20) years and one (1) day to forty (40) years, there was no clear legislative intent to alter its original classification as an indivisible penalty."

Consequently, said resolution deleted from the *Lucas* decision the disquisitions on whether *reclusion perpetua* is a divisible penalty and set aside the pronouncement therein as to its division into three periods. As has heretofore been the nature of this penalty, *reclusion perpetua*, remains as an indivisible penalty without any minimum, medium, or maximum period. As such, it should be imposed in the case at bar in its entire duration in accordance with Article 63 of the Revised Penal Code regardless of the presence of any mitigating or aggravating circumstance that may have attended the commission of the crime.[19] The contrary recommendation of the Solicitor General is accordingly rejected.

ISAGANI SABINIANO, petitioner,
vs.
THE HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, respondents**.**

G.R. No. 76558 October 6, 1995

RODOLFO MARTINEZ, petitioner,
vs.
THE HON. COURT OF APPEALS and PEOPLE OF THE PHILIPPINES, respondents**.**

The courts below correctly convicted petitioner of *estafa thru falsification of public documents* instead of*malversation thru falsification of public documents*, the crime for which he was charged in the information. Estafa is included as a less serious offense than, and cognate to, malversation. **27** There being no proof of any mitigating or aggravating circumstance, the penalty decreed by the courts below is within the statutory range.

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
DOMNINO G. GREFIEL, accused-appellant.

F: Rape; pregnant woman

H: Verily then, the accused-appellant committed the complex crime of forcible abduction with rape.[41] Forcible abduction was the necessary means used to commit the rape. Pursuant to Article 48 of the Revised Penal Code, the penalty for the more serious crime shall be imposed. Article 342 of the said Code penalizes forcible abduction with the penalty of *reclusion temporal* while Article 335 penalizes the crime of rape with *reclusion perpetua*. The latter then is the more serious crime. Accordingly, the penalty imposed by the trial court — *reclusion perpetua* — is correct. We do not, however, agree with its conclusion that the generic aggravating circumstance of nighttime, which is alleged in the Information, should not be appreciated against the accused-appellant. It is obvious that nighttime was deliberately and especially sought or taken advantage of by him to facilitate the commission of the crime.[42] He deliberately waited until the unholy hour of 2:00 o'clock in the morning, thereby being assured of the cover of darkness and the stillness of the sleeping world, before unleashing his criminal fury to accomplish his evil deed.

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs*. CARLITO OLIVA y SALAZAR, *accused-appellant*.

Under Article 335 of the Revised Penal Code, as amended by R.A. No. 7659,[40] the death penalty shall also be imposed if the crime of rape is committed where the victim is a child below seven (7) years old. Here, Analyn Baldon was five years old when she was sexually molested.

JOSE L. GAMBOA and UNITS OPTICAL SUPPLY COMPANY, petitioners,
vs.
COURT OF APPEALS and BENJAMIN LU HAYCO, respondents.

F: On January 5, 1973, one hundred twenty-four (124) complaints of estafa under Article 315, para. 1-b of the Revised Penal Code were filed against him by the petitioner company with the Office of the City Fiscal of Manila.

having collected and received from customers of the said company the sum of ... in payment for goods purchased from it, under the express obligation on the part of the said accused to immediately account for and deliver the said collection so made by him to the Units Optical Supply Company or the owners thereof ..., far from complying with his said aforesaid obligation and despite repeated demands made upon him ... did then and there ... *misappropriate, misapply* and *convert* the said sum to his own personal use and benefit by depositing the said amount in his own name and personal account with the Associated Banking Corporation under Account No. 171 (or with the Equitable Banking Corporation under Account No. 707), and thereafter withdrawing the same ... ."

H: It is provided in Article 48 of our Revised Penal Code, as amended by Act No. 4000, that "(w)hen a *single* act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period." The intention of the Code in installing this particular provision is to regulate the two cases of concurrence or plurality of crimes which in the field of legal doctrine are called "real plurality" and "ideal plurality".[2] There is plurality of crimes or "concurso de delitos" when the actor commits various delictual acts of the same or different kind. "Ideal plurality" or "concurso ideal" occurs when a single act gives rise to various infractions of law. This is illustrated by the very article under consideration: (a) when a single act constitutes two or more grave or less grave felonies (described as "delito compuesto" or compound crime); and (b) when an offense is a necessary means for committing another offense (described as "delito complejo" or complex proper). "Real plurality" or "concurso real", on the other hand, arises when the accused performs an act or different acts with distinct purposes and resulting in different crimes which are juridically independent. Unlike "ideal plurality", this "real plurality" is not governed by Article 48.[3]

Apart and isolated from this plurality of crimes (ideal or real) is what is known as "delito continuado" or "continuous crime". This is a single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts, *each of which*, although of a delictual character, merely *constitutes a partial execution* of a single particular delict, such concurrence or delictual acts is called a "delito continuado". In order that it may exist, there should be "plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, *which means* that two or more violations of the same penal provision *are united in one and the same intent leading to the perpetration* of the same criminal purpose or aim."[4]

In the case before Us, the daily abstractions from and diversions of private respondent of the deposits made by the customers of the optical supply company from October 2, 1972 to December 30, 1972, excluding Saturdays and Sundays, which We assume *ex hypothesi*, cannot be considered as proceeding from a single criminal act within the meaning of Article 48. The abstractions were not made at the *same time* and on the *same occasion*, but on *variable dates*. Each day of conversion constitutes a single act with an independent existence and criminal intent of its own. All the conversions are not the product of a consolidated or united criminal resolution, because each conversion is a complete act by itself. *Specifically*, the abstractions and the accompanying deposits thereof in the personal accounts of private respondent cannot be similarly viewed as "continuous crime".

Private respondent cannot be held to have entertained *continously* the same criminal intent in making the first abstraction on October 2, 1972 for the subsequent abstractions on the following days and months until December 30, 1972, for the simple reason that he was not possessed of any fore-knowledge of any deposit by any customer on any day or occasion and which would pass on to his possession and control. At most, his intent to misappropriate may arise only when he comes in possession of the deposits on each business day but not *in futuro*, since petitioner company operates only on a day-to-day transaction. As a result, there could be as many acts of misappropriation as there are times the private respondent abstracted and/or diverted the deposits to his own personal use and benefit. Thus, it may be said that the City Fiscal had acted properly when he filed only one information for

every single day of abstraction and bank deposit made by private respondent. [10] The similarity of pattern resorted to by private respondent in making the diversions does not affect the susceptibility of the acts committed to divisible crimes.

THE PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
ANTONIO TOLING y ROVERO and JOSE TOLING y ROVERO, defendants-appellants.

The eight killings and the attempted killing should be treated as separate crimes of murder and attempted murder qualified be treachery (*alevosia*) (Art. 14[16], Revised Penal Code). The unexpected, surprise assaults perpetrated by the twins upon their co-passengers, who did not anticipate that the twins would act like *juramentados* and who were unable to defend themselves (even if some of them might have had weapons on their persons) was a mode of execution that insured the consummation of the twins' diabolical objective to butcher their co-passengers. The conduct of the twins evinced conspiracy and community of design.

The eight killings and the attempted murder were perpetrated by means of different acts. Hence, they cannot be regarded as constituting a complex crime under article 48 of the Revised Penal Code which refers to cases where "a single act constitutes two or more grave felonies, or when an offense is a necessary means for committing the other".

The twins are liable for eight (8) murders and one attempted murder.

As no generic mitigating and aggravating circumstances were proven in this case, the penalty for murder should be imposed in its medium period or *reclusion perpetua* (Arts. 64[l] and 248, Revised Penal Code. The death penalty imposed by the trial court was not warranted.

A separate penalty for attempted murder should be imposed on the appellants. No modifying circumstances can be appreciated in the attempted murder case.

PEOPLE OF THE PHILIPPINES, plaintiff-appellee,
vs.
ELISEO MARTINADO y AGUILLON, HERMOGENES MARTINADO y AGUILLON and JOHN DOE, alias "ROLLY", accused-appellants.

It is settled that in order to sustain a conviction for the crime of robbery with homicide, it is imperative that the robbery itself be proven as conclusively as any other essential element of a crime. In the absence of such proof, the killing of the victim would only be simple homicide or murder, depending on the absence or presence of qualifying circumstances. [31]

As We have earlier declared, however, the finding that robbery was committed on the occasion of the killing cannot be sustained. Hence, the accused are liable only for

The penalty then for the crime of homicide under Article 249 of the Revised Penal Code must be imposed in its maximum period pursuant to the third paragraph of Article 64 of said Code.

As modified, the two accused are found guilty of the crime of Homicide under Article 249 of the Revised Penal Code. In view of the aggravating circumstance of abuse of superior strength, and the absence of any mitigating circumstance to offset it, and applying the provisions of the Indeterminate Sentence Law, Hermogenes Martinado y Aguillon is hereby sentenced to suffer an indeterminate penalty ranging from Ten (10) years and One (1) day of *prision mayor* maximum as minimum to Seventeen (17) years, Four (4) months and One (1) day of *reclusion temporal* maximum as maximum.

G.R. No. 165483 September 12, 2006

RUJJERIC Z. PALAGANAS, petitioner, vs. **PEOPLE OF THE PHILIPPINES,** respondent.

For what is a man, what has he got?
If not himself, then he has naught.
To say the things he truly feels;
And not the words of one who kneels.
The record shows I took the blows -
And did it my way!

The song evokes the bitterest passions. This is not the first time the song "My Way" has triggered violent behavior resulting in people coming to blows. In the case at bar, the few lines of the song depicted what came to pass when the victims and the aggressors tried to outdo each other in their rendition of the song.

FACTS:

On January 16, 1998, around 8:00 in the evening, brothers Servillano, [Melton] and Michael, all surnamed Ferrer were having a drinking spree in their house. At 9:45 in the evening, the three brothers decided to proceed to Tidbits Videoke bar located at the corner of Malvar and Rizal Streets, Poblacion, Manaoag to continue their drinking spree and to sing. Inside the karaoke bar, they were having a good time, singing and drinking beer.

Thereafter, at 10:30 in the evening, Jaime Palaganas arrived together with Ferdinand Palaganas and Virgilio Bautista. At that time, only the Ferrer brothers were the customers in the bar. The two groups occupied separate tables. Later, when Jaime Palaganas was singing, [Melton] Ferrer sang along with him as he was familiar with the song [My Way]. Jaime however, resented this and went near the table of the Ferrer brothers and said in Pangasinan dialect "*As if you are tough guys*." Jaime further said "*You are already insulting me in that way*." Then, Jaime struck Servillano Ferrer with the microphone, hitting the back of his head. A rumble ensued between the Ferrer brothers on the one hand, and the Palaganases, on the other hand. Virgilio Bautista did not join the fray as he left the place. During the rumble, Ferdinand went out of the bar. He was however pursued by Michael. When Servillano saw Michael, he also went out and told the latter not to follow Ferdinand. Servillano and Michael then went back inside the bar and continued their fight with Jaime.

Meantime, Edith Palaganas, sister of Jaime and the owner of the bar, arrived and pacified them. Servillano noticed that his wristwatch was missing. Unable to locate the watch inside the bar, the Ferrer

brothers went outside. They saw Ferdinand about eight (8) meters away standing at Rizal Street. Ferdinand was pointing at them and said to his companion, later identified as petitioner [Rujjeric] Palaganas, "*Ororatan paltog mo lara*", meaning "They are the ones, shoot them." Petitioner then shot them hitting Servillano first at the left side of the abdomen, causing him to fall on the ground, and followed by [Melton] who also fell to the ground. When Servillano noticed that [Melton] was no longer moving, he told Michael "*Bato, bato*." Michael picked up some stones and threw them at petitioner and Ferdinand. The latter then left the place. Afterwards, the police officers came and the Ferrer brothers were brought to the Manaoag Hospital and later to Villaflor Hospital in Dagupan. Servillano later discovered that [Melton] was fatally hit in the head while Michael was hit in the right shoulder.

In this petition, petitioner argued that all the elements of a valid self-defense are present in the instant case and, thus, his acquittal on all the charges is proper; that when he fired his gun on that fateful night, he was then a victim of an unlawful aggression perpetrated by the Ferrer brothers; that he, in fact, sustained an injury in his left leg and left shoulder caused by the stones thrown by the Ferrer brothers; and that the slug found on the wall was, in fact, the "warning shot" fired by the petitioner. Moreover, the warning shot proved that that the Ferrer brothers were the unlawful aggressors since there would have been no occasion for the petitioner to fire a warning shot if the Ferrer brothers did not stone him; that the testimony of Michael in the trial court proved that it was the Ferrer brothers who provoked petitioner to shoot them; and that the Ferrer brothers pelted them with stones even after the "warning shot."

ISSUE: Whether or not the CA erred in not acquitting accused-appellant on the ground of lawful self-defense.

RULING: Petitioner's contention must fail.

Article 11, paragraph (1), of the Revised Penal Code provides for the elements and/or requisites in order that a plea of self-defense may be validly considered in absolving a person from criminal liability, viz:

> **ART. 11.** *Justifying circumstances*. – The following do not incur any criminal liability:
>
> 1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;
>
> First. Unlawful aggression;
>
> Second. Reasonable necessity of the means employed to prevent or repel it;
>
> Third. Lack of sufficient provocation on the part of the person defending himself. x x x.

As an element of self-defense, unlawful aggression refers to an assault or attack, or a threat thereof in an imminent and immediate manner, which places the defendant's life in actual peril. It is an act positively strong showing the wrongful intent of the aggressor and not merely a threatening or intimidating attitude. It is also described as a sudden and unprovoked attack of immediate and imminent kind to the life, safety or rights of the person attacked.

There is an unlawful aggression on the part of the victim when he puts in actual or imminent peril the life, limb, or right of the person invoking self-defense. There must be actual physical force or actual use of weapon. In order to constitute unlawful aggression, the person attacked must be confronted by a real threat on his life and limb; and the peril sought to be avoided is imminent and actual, not merely imaginary.

In the case at bar, it is clear that there was no unlawful aggression on the part of the Ferrer brothers that justified the act of petitioner in shooting them. There were no actual or imminent danger to the lives of petitioner and Ferdinand when they proceeded and arrived at the videoke bar and saw thereat the Ferrer brothers. It appears that the Ferrer brothers then were merely standing outside the videoke bar and were not carrying any weapon when the petitioner arrived with his brother Ferdinand and started firing his gun.

Assuming, arguendo, that the Ferrer brothers had provoked the petitioner to shoot them by pelting the latter with stones, the shooting of the Ferrer brothers is still unjustified. When the Ferrer brothers started throwing stones, petitioner was not in a state of actual or imminent danger considering the wide distance (4-5 meters) of the latter from the location of the former. Petitioner was not cornered nor trapped in a specific area such that he had no way out, nor was his back against the wall. He was still capable of avoiding the stones by running away or by taking cover. He could have also called or proceeded to the proper authorities for help. Indeed, petitioner had several options in avoiding dangers to his life other than confronting the Ferrer brothers with a gun.

The fact that petitioner sustained injuries in his left leg and left shoulder, allegedly caused by the stones thrown by the Ferrer brothers, does not signify that he was a victim of unlawful aggression or that he acted in self-defense. There is no evidence to show that his wounds were so serious and severe. The superficiality of the injuries sustained by the petitioner is no indication that his life and limb were in actual peril.

Petitioner's assertion that, despite the fact that he fired a warning shot, the Ferrer brothers continued to pelt him with stones, will not matter exonerate him from criminal liability. Firing a warning shot was not the last and only option he had in order to avoid the stones thrown by the Ferrer brothers. As stated earlier, *he could have run away, or taken cover, or proceeded to the proper authorities for help.* Petitioner, however, opted to shoot the Ferrer brothers.

The second element of self-defense requires that the means employed by the person defending himself must be reasonably necessary to prevent or repel the unlawful aggression of the victim. The reasonableness of the means employed may take into account the weapons, the physical condition of the parties and other circumstances showing that there is a rational equivalence between the means of attack and the defense. In the case at bar, the petitioner's act of shooting the Ferrer brothers was not a reasonable and necessary means of repelling the aggression allegedly initiated

by the Ferrer brothers. As aptly stated by the trial court, petitioner's gun was far deadlier compared to the stones thrown by the Ferrer brothers.

G.R. No. 121828. June 27, 2003

PEOPLE OF THE PHILIPPINES, *appellee,* **vs. EDMAR AGUILOS, ODILON LAGLIBA Y ABREGON and RENE GAYOT PILOLA***, accused,* **RENE GAYOT PILOLA,** *appellant.*

FACTS: On February 5, 1988, at around 11:30 p.m., Elisa Rolan was inside their store at 613 Nueve de Pebrero Street, Mandaluyong City, waiting for her husband to arrive. Joselito Capa and Julian Azul, Jr. were drinking beer. Edmar Aguilos and Odilon Lagliba arrived at the store. Joselito and Julian invited them to join their drinking spree, and although already inebriated, the two newcomers obliged. In the course of their drinking, the conversation turned into a heated argument. Edmar nettled Julian, and the latter was peeved. An altercation between the two ensued. Elisa pacified the protagonists and advised them to go home as she was already going to close up. Edmar and Odilon left the store. Joselito and Julian were also about to leave, when Edmar and Odilon returned, blocking their way. Edmar took off his eyeglasses and punched Julian in the face. Elisa shouted: "*Tama na. Tama na*." Edmar and Julian ignored her and traded fist blows until they reached Aling Sotera's store at the end of the street, about twelve to fifteen meters away from Elisa's store.

For his part, Odilon positioned himself on top of a pile of hollow blocks and watched as Edmar and Julian swapped punches. Joselito tried to placate the protagonists to no avail. Joselito's intervention apparently did not sit well with Odilon. He pulled out his knife with his right hand and stepped down from his perch. He placed his left arm around Joselito's neck, and stabbed the latter. Ronnie and the appellant, who were across the street, saw their gangmate Odilon stabbing the victim and decided to join the fray. They pulled out their knives, rushed to the scene and stabbed Joselito. Elisa could not tell how many times the victim was stabbed or what parts of his body were hit by whom. The victim fell in the canal. Odilon and the appellant fled, while Ronnie went after Julian and tried to stab him. Julian ran for dear life. When he noticed that Ronnie was no longer running after him, Julian stopped at E. Rodriguez Road and looked back. He saw Ronnie pick up a piece of hollow block and with it bashed Joselito's head. Not content, Ronnie got a piece of broken bottle and struck Joselito once more. Ronnie then fled from the scene. Joselito died on the spot.

On June 7, 1998, Edmar Aguilos, Odilon Lagliba y Abregon and appellant Rene Gayot Pilola were charged with murder. Of the three accused, Odilon Lagliba was the first to be arrested and tried, and subsequently convicted of murder. The decision of the trial court became final and executory. Accused Edmar Aguilos remains at large while accused Ronnie Diamante reportedly died a month after the incident. Meanwhile, herein appellant Rene Gayot Pilola was arrested. He was arraigned on March 9, 1994, assisted by counsel, and pleaded not guilty to the charge.

The appellant argues that there was no conspiracy in stabbing the victim to death. In the absence of a conspiracy, the appellant cannot be held liable as a principal by direct participation. He asserts that he is merely an accomplice and not a principal by direct participation.

ISSUE: Whether or not criminal liability is incurred in the absence of conspiracy.

RULING: Even if two or more offenders do not conspire to commit homicide or murder, they may be held criminally liable as principals by direct participation if they perform overt acts which mediately or immediately cause or accelerate the death of the victim, applying Article 4, paragraph 1 of the Revised Penal Code:

> **Art. 4.** *Criminal liability*. – Criminal liability shall be incurred:
>
> 1. By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

In such a case, it is not necessary that each of the separate injuries is fatal in itself. It is sufficient if the injuries cooperated in bringing about the victim's death. Both the offenders are criminally liable for the same crime by reason of their individual and separate overt criminal acts. Absent conspiracy between two or more offenders, they may be guilty of homicide or murder for the death of the victim, one as a principal by direct participation, and the other as an accomplice, under Article 18 of the Revised Penal Code:

> **Art. 18.** *Accomplices.* – Accomplices are the persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.

To hold a person liable as an accomplice, two elements must concur: (a) the community of criminal design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (b) the performance of previous or simultaneous acts that are not indispensable to the commission of the crime. Accomplices come to know about the criminal resolution of the principal by direct participation after the principal has reached the decision to commit the felony and only then does the accomplice agree to cooperate in its execution. Accomplices do not decide whether the crime should be committed; they merely assent to the plan of the principal by direct participation and cooperate in its accomplishment. However, where one cooperates in the commission of the crime by performing overt acts which by themselves are acts of execution, he is a principal by direct participation, and not merely an accomplice.

In this case, Odilon all by himself initially decided to stab the victim. The appellant and Ronnie were on the side of the street. However, while Odilon was stabbing the victim, the appellant and Ronnie agreed to join in; they rushed to the scene and also stabbed the victim with their respective knives. The three men simultaneously stabbed the hapless victim. Odilon and the appellant fled from the scene together, while Ronnie went after Julian. When he failed to overtake and collar Julian, Ronnie returned to where Joselito fell and hit him with a hollow block and a broken bottle. Ronnie then hurriedly left. All the overt acts of Odilon, Ronnie and the appellant before, during, and after the stabbing incident indubitably show that they conspired to kill the victim.

The victim died because of multiple stab wounds inflicted by two or more persons. There is no evidence that before the arrival of Ronnie and the appellant at the situs criminis, the victim was already

dead. It cannot thus be argued that by the time the appellant and Ronnie joined Odilon in stabbing the victim, the crime was already consummated.

Even assuming that the appellant did not conspire with Ronnie and Odilon to kill the victim, the appellant is nevertheless criminally liable as a principal by direct participation. The stab wounds inflicted by him cooperated in bringing about and accelerated the death of the victim or contributed materially thereto.

G.R. No. 130605. June 19, 2001
PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, **vs. FELIX UGANAP alias Commander Matador, FAUSTINO UGANAP, SALVADOR UGANAP, NONOY PANDAY, TIRSO ARANG** and **four (4) JOHN DOES,** *accused.*
FELIX UGANAP, *accused-appellant.*

FACTS: Petitioner is the lone appellant from the decision of the Regional Trial Court of Davao City which convicted him alone for the murder of Pedro Arang and acquitted the rest of the accused.

It was established from the testimonies that the victim and some of the accused were close relatives. Accused Tirso Arang is the half-brother of the victim, while accused-appellant Felix Uganap is also the victim's cousin. Accused Faustino Uganap is the brother-in-law of the victim, being the brother of the latter's wife, Leilani Arang. They are all members of the Bagobo tribe.

The lone eyewitness, Samuel Arang, also a cousin of the victim, testified that at around 8:30 in the evening of January 6, 1990, he was walking home when he stopped near the house of Salvador Uganap, one of the accused, to light a cigarette. He peeped through a hole in the wall of the house and saw the five accused gathered together --- Felix Uganap had a .38 revolver tucked to his waist, while Nonoy Panday held a pistolized carbine. The room was illuminated by a lamp. Upon seeing that they were armed, Samuel Arang moved away from the house and hid behind a coconut tree. The accused left Salvador Uganap's house and went to the victim's house, which was about 30 meters away from where the witness was. Samuel Arang stated that he saw Salvador Uganap kick the door of Pedro Arang's house; seconds later, Pedro opened the door, carrying with him a kerosene lamp. Immediately, Felix Uganap shot him. Pedro shouted for help, calling on his "Tio Pelagio" (the eyewitness's father). Upon seeing the shooting, Samuel Arang fled to his house where he told his father of what he saw. As they were afraid, they did not attempt to rescue the victim but waited until the next morning to attend to the body.

Samuel Arang correctly identified the four surviving accused in open court.

The trial court also took into consideration the testimony of Nolly Luchavez, who identified all the accused as members of a religious vigilante group called *Ituman*. Luchavez's testimony revealed that the plan to kill Pedro Arang was proposed by Faustino Uganap at a coffee shop in Toril, Davao City on December 18, 1989. Present at that meeting were the four other accused and Luchavez. Faustino paid Felix P3,000.00 for the purpose. Luchavez was supposed to knock on the door of Pedro Arang's house. He said that the group intended to undertake the killing on December 24, but this was aborted since they found out that the victim left town to visit his wife in Tagum. Hence, the plan was set to January 6.

Luchavez, however, was unable to go with the group to Pedro Arang's house because he had a fever that day. Felix Uganap reportedly said, "Well, it is alright, anyway we have another mission." The day after, he learned from Tirso Arang and Felix Uganap that Pedro had been killed.

All the accused interposed denials and alibis. They denied that they were together on the night of the incident, or that they went to the house of Pedro Arang. Faustino said he was making copra with his nephew, Margarito Arang. Nonoy Panday and Tirso Arang said that they were not in town. Accused-appellant stated that he reported to work at Crown Fruits, where he remained on duty as a guard the whole night. They all denied being members of the vigilante group Ituman.

ISSUE: Whether or not there was evident premeditation.

RULING: The elements of evident premeditation must be established with equal certainty and clarity as the criminal act itself before it can be appreciated as a qualifying circumstance. These elements are: (1) the time when the accused determined to commit the crime; (2) an overt act manifestly indicating that they clung to their determination to commit the crime; and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of their act. The essence, therefore, of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment.

All the elements of evident premeditation are met in this case. As early as December 18, 1989, the conspirators had determined to kill Pedro Arang. On December 24, 1989, they met to set their heinous plan into effect but they had to postpone it because Pedro left for another town to visit his wife. Still they clung to their resolve as they simply postponed the execution to January 6, 1990. All these demonstrate that the criminal intent had been harbored in dark reflection and calculation for more than two weeks, where the malefactors had every opportunity to abandon it but did not do so.